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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF:

GIBRALTAR BOARD OF EDUCATION,

-and-

Case Number: D85-I-2217

GIBRALTAR EDUCATION ASSOCIATION, MEA/NEA.

FACT FINDER: SANDRA G. SILVER

APPEARANCES:

Board of Education	Education Association
James R. Spalding	Bob Thomas, MEA Representative

The parties in this matter, on application of the Employer, the Gibraltar Board of Education, have agreed to submit their differences to fact finding pursuant to Section 25 of Act 176 of Public Acts of 1939. The fact finding was held under agreed-to, expedited rules. Argument and exhibits were submitted to the Fact Finder on September 23, 1987, at the offices of Sandra G. Silver. No briefs were to be submitted, and the Fact Finder agreed to issue a bench decision. Because of the truncated time period involved, it was understood by the parties that the findings made would be brief, and would be followed by a more extensively reasoned report if the parties so wish. The teachers represented by the Union in this matter have not returned to work during the 1987 school year, and a complaint has been filed with the Wayne County Circuit Court by the Board of Education.

NO STRIKE PROVISION

The following contract language has been in the collective bargaining agreement between the parties for many years. The language of Article 2.7 reads as follows:

> "Strike Prohibition. No teacher or the Union shall participate in or cause any strike of any type, nor shall any teacher or the Union participate in or cause any work stoppage, nor shall any teacher refuse to carry out normal work assignments during the term of this agreement. The Board shall not lock out any teachers during the time of this agreement."

The Union has proposed that this language be deleted from the contract. There was no showing to the Fact Finder of any reason why it is necessary to delete this language which the Employer feels is important. Although there is a statutory provision prohibiting strikes by public employees (PERA), that statutory provision applies to public employees only. It is obvious from the circumstances presented to the Fact Finder that Gibraltar Education is presently on strike, having refused to return to work without a contract. The oft-stated legal reason for contract prohibitions against strike is that the promise not to strike is the quid pro quo for binding arbitration. The contract includes, and the parties have tentatively agreed to, binding arbitration in their grievance procedure. The strike prohibition clause in the contract would thus be independent of the statutory prohibition and given in exchange for binding arbitration.

PRESIDENT'S RELEASE TIME

The Union has proposed language which would release the President for one hour per day to conduct Union business without loss of compensation. The Board will agree to the one hour of release time, but insists that the President would then be paid four-fifths of her annual contract wage rate. The Board has argued that the present contract language, which it wishes to preserve with the addition concerning the presidency, already provides for ample Union business days. A review of that language by this Fact Finder shows that there is no guaranteed release time for the conduct of Union business within the District. The language refers to the use of preparation period for Union business, but only when it does not interfere with a building assignment. Thus, there is no guarantee of having the preparation time available. Also, another thirty days are guaranteed in the language, but that language is for only regional, state or national meetings.

The servicing of the Union membership within the School District, conferring with stewards or grievants, the filing of grievances and other such matters are not sufficient to be included in that thirty day time period. The Union proposed language for the four-fifths day for the Union President, giving her one hour of release time to conduct Union business, appears reasonable. Since the services of the Union President in this regard benefits both the Union members and, thus, the School District itself, payment of full compensation for the President's

time, if she remains on the premises of the School District, appears reasonable to the Fact Finder.

It should also be understood that the release time of one hour for the Union President was negotiated in a Memorandum of Understanding included in the previous contract. In that memorandum, the President did not personally lose any compensation, although the Union reimbursed the District for that one-fifth time. Additionally, however, the Board received the benefit of changing carriers and other matters which more than amply paid for the release time. This Fact Finder finds that one hour release time without any loss in compensation is a reasonable result of the bargained Memorandum of Understanding previously entered into.

It should also be noted in this regard that comparables submitted to the Fact Finder by the Union show that the School Districts in South Redford, Wayne, Westland and Woodhaven, all are provided this and more in the release time and compensation for Union representatives.

ACT OF GOD DAYS

Both parties propose an addition to the current contract language concerning days where weather conditions cause the cancellation of regularly scheduled classes. The Association proposes that if "Act of God" days must be rescheduled to achieve 100% of State school aid, that the Union and the Board of Education shall meet to reschedule any additional days. The School Board proposes that the Board shall meet and confer with the Union on the rescheduling of "Act of God" days, but that the final decision shall rest with the Superintendent. Both parties are agreed that there shall be no extra compensation paid for these rescheduled days.

The Association has argued that if the parties cannot agree to a rescheduling of "Act of God" days, then the statutory provisions for impasse resolutions should be followed. The Board, in turn, has argued that there is insufficient time to follow these procedures through mediation, fact finding, etc., and that the Board has responsibility for meeting the State mandated number of scheduled class days.

It is obvious that someone must have final authority in such matters. There is not sufficient time frequently to go through the procedures as the Board has mentioned. For example, it is not unusual in Michigan for there to be severe ice storms in March, causing cancellation of regularly scheduled classes. In the few months remaining in the school year, it would be well nigh impossible to implement the usual impasse resolution procedures. As a practical matter, there must be a final

authority to schedule the make-up days. Both parties agree that the rescheduling should be done by negotiations with the Union. The Fact Finder would recommend that if after one week of negotiations no agreement has been reached, then final authority and the decision on rescheduling shall be made by the Superintendent of Schools.

CLASS SIZE

There is probably no issue presented to the Fact Finder which more directly affects the well-being of the students in the Gibraltar School District than the size of the classes in which the students are enrolled. The Association has presented cogent evidence to the Fact Finder that on a comparative basis with other Wayne County School Districts, that the Gibraltar District pupil-teacher ratio is ranked 29th out of 34 school districts. The data presented was from the Wayne County School's databook statistics for the 34 school districts. The 29th ranking is for the 1986-1987 school year for kindergarten; the Gibralter District ranked 32nd for elementary school class size, and the same for junior and high school.

There was some dispute on the compilation of the County data in that it appeared that the number of kindergarten teachers was counted again for elementary school. Regardless of this error in compiling data, it is obvious to the Fact Finder that class size in the Gibraltar School District is greater than necessary, and considerably larger than the overwhelming majority of other school districts in Wayne County.

The School District did not dispute at any time that the recommended class sizes by the Association were less than reasonable. The class size recommendation by the Association's proposal would be 26 for kindergarten through second grade; 28 for third and fourth grades; 30 for fifth and sixth grades, and 32 for secondary school. The Association has also recommended that school counselors shall be assigned the recommended number

of students as set forth by the North Central Accreditation Association. It is apparent that the students assigned to counselors at present are almost double that of the recommended number.

The School Board's primary opposition to the inclusion of class size maximums in the contract is that it might become too great a financial burden in the future. The Association's proposal provides that if revenues to the School District drop by more than two percent per pupil, that the class size maximum would be waived. This is some insurance to the School Board that their financial future in fact would not be totally burdened by this provision. A reduction in revenues, from whatever source other than generated by the School District itself, would result in a waiver of class size. Since the Board agrees that smaller class sizes are extremely desirable and should be striven for, the Fact Finder is at a loss as to its full opposition to the Union proposal.

It should also be noted that the school population itself has decreased over the years in the Gibraltar School District. This should result in a shrinkage of class size, revenues, and demands on the School District. The Board of Education has argued that not only should a reduction in revenue be a standard for waiving class size maximum, but that a rise in expenditures should be included as well. Since the Board of Education is prohibited from operating in the red by State law, the Fact Finder has difficulty on this expenditure issue. The Board has full discretion as to how the funds will be distributed, and

although the proportions spent for different things will vary from year to year, the available revenues become the controlling issue. Thus, the Association language governing class size with a waiver when a reduction of two percent in revenues occurs seems reasonable. Similarly, if class size maximums are written into the contract and agreed to by the parties, then there should be no necesssary bonus for teachers having larger class loads than the maximums in the contract.

Because of the varying demands generated by the scheduling of student electives, there may be times when a class size appears above the contract which must be resolved with the Union. If the Association language and demand for maximum class size is part of the collective bargaining agreement, then occasional difficulties in scheduling of elective courses will have to be negotiated at the time they occur. Every contingency in this matter cannot be predicted by the collective bargaining agreement itself.

FRINGE BENEFITS

The provisions on fringe benefits to be included in the collective bargaining agreement are detailed and complex. Because of the expedited nature of this fact finding, some of the areas will have to be omitted from discussion without further investigation by the Fact Finder.

One of the simplest of the proposals is that the Board has asked that new contract language be provided in the contract that refers to Federal Public Law 99-272, Title X, "COBRA". The Association has argued that since COBRA is the law of the land, that it must be enforced and no contract language is necessary. This law is of recent vintage, and has made great changes in the benefits available to retirees. It has a definite effect on collective bargaining agreements, and by terms of the law itself, failure to inform the employees of its terms is a violation of the law. The inclusion of the COBRA clause as requested by the Board of Education is one way of giving notice to the teacher employees of the District that this applies to each of them. There is no apparent reason not to include the COBRA language in the contract, and the opposition of the Association appears based on nothing more than the language is new.

The Board has tried in its proposed language to insure that large increases in the cost of health and dental insurance shall allow it to change insurers. The Association objects strongly to this provision. No costs can be guaranteed on anything in the future. It would be apparent to this Fact Finder and should be to the parties that if an exorbitant increase in health insurance

occurred, that the next contract negotiations would have to make some accommodation to that fact. The parties in this instance are already through the first year of a proposed three year contract, and the risk cited by the Board of Education is thus already reduced by one-third since there are only two years to run. Since the Board of Education would have to be able to get a quotation for this year from which it is presently bargaining, the risk is reduced by another one-third. It is unlikely that the third year of the contract will produce numbers for costs of health insurance so wildly out of line with what is presently known. It is understandable that the Association opposes an open-ended fringe benefit of health insurance which leaves them with the possibility of having their insurance changed without negotiation and consultation as should occur on any contract adjustment.

The major issue between the parties concerning fringe benefits involves a MESSA Care Rider. This Rider would require that where elective surgery is concerned, that the insured person must obtain a second opinion. Additionally, the party must inform the insurance company of a hospitalization within 72 hours of its occurrence. The Association objects to this Rider on grounds that a single person employee might not be able to notify the insurance company, or an emergency may occur out of town and the insured person is unable to contact the insurance company. These fears may be totally without foundation. There is presently litigation concerning these notice provisions for several health insurers, and in fact, the concerns expressed by

the Association may be resolved by court decision or rules of the insurance commission. The savings to the Board of Education are substantial, and should make it possible to provide the additional benefits which the Association has requested.

The Union request to maintain language in the contract that the parties will jointly investigate changes in hospitalization carriers to provide like benefits at less cost is reasonable. The School District should at all times be trying to reduce the cost of expenditure of tax dollars, and it is only through investigation of other available programs that such is possible. The Fact Finder can find no reason to change that language as it appears to be eminently sensible.

WAGES

Usually disputes concerning the wage demands of employees are met by protests of inability to pay and the maintenance of a competitive environment. In the instant matter, the Gibraltar School District and the Gibraltar Education Association have stipulated that ability to pay is not an issue. The fund equity position of the School District is approximately $1,000,000.00. This represents a surplus available to the Board to allocate to meet the demand of providing an education for the children of the Gibraltar School District.

Although the Board has stated that ability to pay is not an issue, it has stated that the setting of priorities for expenditures in the School District require that a smaller raise be provided school teachers, and the funds expended for capital improvements, the purchase of textbooks, and the repair and maintenance of present facilities. A proposed budget and five year program to make these improvements was presented to the Fact Finder and represented proposed expenditures of approximately $500,000.00. Plans for renovations were presented as a "shopping list" without a price tag. The Fact Finder has no doubt that most of these expenditures are necessary, and will have to be undertaken by the Board. Without a full price tag presented, however, the Fact Finder can reach no conclusion beyond the original $500,000.00 presented. This would still leave another $500,000.00 available for other purposes just on the basis of the equity position of the School District without any further revenues.

The Board has also presented the figures showing that the Union demand for wage increase would cost the School District $1,466,610.00.

The Association has not presented any total cost figures, but has presented a demand of a 5 percent increase for 1986-1987; 8 percent increase for 1987-1988; and a 3 percent increase for 1988-1989. This is in addition to a COLA allowance of 4 to 6 percent. The Board proposal offers a 3 percent increase for each year of the contract, and a complete deletion of the COLA allowance. The Board has later made an offer that the 1987-1988 year be increased to 4 percent if a change in the MESSA insurance is allowed.

It is clear that a COLA allowance has been part of the contract between the parties for at least ten years. The Board argues that because it has been there all these years does not mean it has become sacrosanct and is not subject to collective bargaining. This is entirely correct. The popularity and wide spread use of COLA provisions in collective bargaining agreements was a result of the extraordinary inflation experienced in the United States from the late 1970's through the early 1980's. Using the Consumer Price Index of 1986, however, the inflation rate was at 1.9 percent, and in fact in the last four years, has reached a maximum level of only 3.5 percent. The Fact Finder takes judicial notice that present economic forecasts call for a level in the rate of inflation. Therefore, a COLA allowance of 4 to 6 percent represents a demand for a wage increase rather than a buttress to Association members salaries that should not be

eroded by the cost of inflation. A COLA allowance to protect against the ravages of inflation is reasonable and has become somewhat standard throughout the country in negotiated wage agreements. However, setting that demand in amounts larger than the CPI index is only an additional wage demand as stated.

The Association and the School District generally agree on the ranking of the Union and District proposals for wage increases. Each party has broken down the wage demands into the various levels represented by degrees and seniority. Neither party has made any objection to the continuation of those levels. In the 1985-1986 school year, the Gibraltar District ranked fourth in the County in pay levels for its teacher employees. The Association's wage demand would place Gibraltar fourth in the County for teachers holding a Bachelors Degree. The Board proposal would place Gibraltar as sixth in the County ranking of 34 districts.

Additionally, the Union proposal would place Gibraltar as first in the county for the maximum salary for those with Masters Degrees, and the Board proposal would maintain the District in a fourth ranking in the County. It has also been noted by the Fact Finder that the average increase in teachers' contracts in Wayne County for this year has been at a fraction more than 6 percent. The rcent Detroit contract was negotiated at 6-1/2 percent for the first year. It should also be noted that any increase which is negotiated in the collective bargaining agreement will be retroactive for the 1986 school year, since teachers worked all of last year without any contract. Thus, under either proposal,

the teachers will receive a lump sum payment to cover the retroactive period.

The Union's proposal for the first year of the contract appears at approximately the fourth place ranking which it has had previously. The Fact Finder has also taken note that many of the salaries quoted as part of the ranking of payment to teachers do not include rather substantial longevity pay factors. The Union proposal for the 1986-1987 year would maintain what is presently ranked for the Gibraltar teachers. The Fact Finder holds this to be reasonable. The Union demand for 1987-1988, however, would place Gibraltar at the top level of pay for teachers in every category. In a district which ranks only 22nd in the County in taxes, this demand has no rational basis. The Board of Education offer for that year would maintain approximately the same relative position of the teachers. This would be particularly so if a COLA allowance tied exactly to the CPI were part of the contract. Both parties are in agreement as to a salary increase for the 1988-1989 school year at 3 percent. If the Board receives agreement on the MESSA health insurance provisions it has asked and the Fact Finder has recommended, then that increase as offered should be 4 percent.

FINANCIAL CONSIDERATIONS AND GENERAL FINDINGS OF FACT

As previously stated, the Gibraltar School District is in an enviable financial position. It has already been noted that the District carries an equity fund surplus on its books, and that it does not object to the teacher wage proposal on grounds of inability to pay. There are other needs of the School District which must be met, and the Association should be as aware of this as the District itself. It has also been found by this Fact Finder that the School District of Gibraltar, although at the top level of the teacher's salary scale, is only 22nd in the County in the levying of operational taxes. Because of the location of the new Mazda plant in Gibraltar, it is anticipated by this Fact Finder that the tax base of the community will be growing.

Many of the proposals discussed above do not in fact represent any insoluble differences between the parties. These matters could be resolved with good faith bargaining and a determination to achieve a collective bargaining agreement. The nature of collective bargaining means that neither party will obtain everything they demand, but that both parties will achieve enough of their aims that the parties can continue both working and bargaining in the future in good faith.

Sandra G. Silver P26115
Fact Finder