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WALTER S. NUSSBAUM, J.D.
ARBITRATOR & FACT FINDER
333 WEST FORT STREET, SUITE 2000
DETROIT, MICHIGAN 48226

(313) 964-4670

STATE OF MICHIGAN

BEFORE THE DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

GRAND RAPIDS PUBLIC SCHOOLS

-and- **Case No. G84 D-649**

GRAND RAPIDS EDUCATION ASSOCIATION

Walter Nussbaum

FACT FINDING REPORT

Grand Rapids Public Schools

Appearances:

Grand Rapids Public Schools --

Mr. Peter Patterson, Attorney
Mr. Roland Lubbinge, Chief Negotiator
Ms. Maureen Slade, Director of Special Education
Dr. Elmer Vruggink, Deputy Superintendent
Ms. Jean Enright, Associate Superintendent for Community Education

Grand Rapids Education Association --

Ms. Lillian Stoner, Chief Negotiator
Mr. Larry L. Fischer, Attorney
Mr. Tom Taylor, UniServ
Mr. Chuck Parks, President & PN Team Member
Ms. Karilyn Frederick, Treasurer & PN Team Member
Ms. Teasther W. Smith, NEA Board of Directors & PN Team Member
Mr. Backlow George Woons, Superintendent Kent ISD
Mr. Willie R. Suber, Staff
Mr. Ricky Booker, PN Team Member
Mr. Randy Weger, PN Team Member

REPORT OF FACT FINDER---BINDING FACT FINDING

These parties have been bargaining collectively as to wages, hours, and working conditions for teachers in the Grand Rapids Public Schools for many years (since 1966). They have had many opportunities to explore all areas of the natural intentions that make the system of collective bargaining function. Each party has had ample opportunity to come to know the other.

The previous contract expired August 31, 1984. Bargaining, in a formalized sense, began on June 21, 1984, and continued without significant progress until the early morning hours of September 4, 1984, at which time the collective bargaining representative, through it's spokesperson, announced a work stoppage.1/

Schools did not re-open as scheduled on September 4, 1984. The parties continued to bargain with the assistance of Mediators from the Michigan Employment Relations Commission (MERC) through the early morning hours of September 9, 1984.

Proposals made in the last bargaining session were rejected by the Employees on September 9, 1984.2/

On September 7, 1984, the parties were advised of the appointment of a Fact Finder by MERC. The Fact Finder was advised of his appointment by telephone during the evening of September 7, 1984, and immediately initiated contact with the parties and the Mediators by telephone.

An initial conference was scheduled for September 9, 1984, at 1:30 p.m., at the Lansing Office of MERC. The Sunday date was chosen so that the parties could continue to bargain on September 8, 1984, with the competent and generous assistance of the mediation staff of MERC. The Fact Finder was to remain available for consultive services on September 8 and 9, 1984.

At approximately 8:00 a.m. on September 9, 1984, the Fact Finder was advised that new proposals had been generated in the mediation process that ended some 19 hours after the inception of the final mediation conference.

1/ Testimony of Mr. Lubbinge which was uncontested.

2/ Internal Report of MERC, per Mediators and Fact Finder

It is uncontroverted that no new economic proposals were placed on the table by the Employer between June 21, 1984, and August 21, 1984, approximately two weeks before classes were to begin.

In the next two weeks, although neither party really modified its formal position, new offers were processed by the Mediators and put before the Employer's team.

This Fact Finder is convinced that this negotiation took on some of the characteristic coloration and mood of industrial bargaining as opposed to public sector bargaining. The impasse at which the parties arrived, resulted from last-ditch confrontational negotiation from which the parties had great difficulty extricating themselves. Both parties made substantial contributions to the impasse.

The citizens of Grand Rapids deserve a more forthcoming style of negotiation from both sides.

The Schools were opened using substitutes and aides. The Employer contends that no instructional days were lost. The collective bargaining representative claims all the days were lost because the level of instruction did not reach a qualitative standard adequate to the needs of the student population.

The Employer offered evidence tending to establish that real instruction was going forward in the classroom and that there was inspection by the Intermediate School District tending to corroborate it's position. This testimony was partially impeached on cross-examination. The impeachment was based on the honest and forthright testimony of Employer's witness who acknowledged that the individual inspections could last but a few minutes, that there was some reliance on anecdotal information from administrators, and the credentials of teachers had not been verified as of the date of hearing, September 10, 1984.

This Fact Finder is convinced that he cannot put aside his basic knowledge and common sense in making factual determinations. It is certain in his mind that classes started without the teachers, substitutes and aides in most cases, having an opportunity to develop lesson plans tailored to their own knowledges, disciplines, and skill levels. In this regard, it should be noted that the Board's testimony was in entirely silent with reference to the proportion of regular substitute teachers or aides engaged in the teaching process. It was likewise silent on the specific issue of the preparation of lesson plans, although an affidavit attached to the brief was offered as evidence on the issue of lesson plans.

This Fact Finder finds himself unconvinced that in this case, on the sworn testimony and evidence before him, that there

was substantial evidence that teachers were fully familiar with lesson plan requirements, information and data, at least for September 6 and 7, 1984.

It is the further opinion of the Fact Finder that at least two days of student contact and review of curriculum data would have been required to develop individualized lesson structures for the teachers. The Fact Finder further finds that after two days, it was likely that the temporary teachers were able to plan ahead and work at an appropriate level to reach realistic achievement goals.

No evidence was introduced on the subject of teacher preparation by either party that was acceptable to this Fact Finder. Therefore, the Fact Finder is relying on his own knowledge, experience and judgment, as well as the limited amount of testimony adduced to arrive at this conclusion.

The collective bargaining representative has chosen to withhold the services of the teaching staff and in doing so, violated the statutory prohibition against strikes contained in PERA, MCLA 423.201 and MCLA 423.202, 1947 PA 336, as amended.

The problem resolution mechanisms of the statutory process, including third-party intervention, were not utilized fully. This action cannot and will not be rewarded by extending the school year beyond the number of days necessary to affect a recovery of the two days previously discussed.

In reviewing the briefs of the parties, it is apparent that the collective bargaining representative perceives this Fact Finder's obligation as being, in some respects, concomitant with the obligation of the State Board of Education relating to the allocation of school aid. It is equally certain that the Employer in this case believes that the Fact Finder has no obligation whatsoever to look beyond the naked testimony, except to the extent that it would like the Fact Finder to accept as fact the assertions and affidavits attached to the briefs, even though the affiants were not subjected to the usual tests as to credibility.

Both parties misapprehend the role of a fact finder in public sector bargaining. The obligation of the fact finder is to determine, not only from the information made available by the parties, but other information generally available what facts exist which reflect upon the matters in dispute between the public employer and the employees represented by a collective bargaining association or union. Further, it is the responsibility of the fact finder, after examining those issues in dispute as related by the parties, to make a recommendation which is likely to result in the settlement of the dispute, a restoration of reasonably peaceful relationships between employer

and employees, and satisfaction to the general public that the public's interests have been secured.

Against that frame of reference, a situation exists in which a collective bargaining agency has chosen to withhold the services of it's members, even though such activity is prohibited by law. Among the justifications offered are justifications based upon the fact that it has agreed, by it's contract for a specific wage, to have a school year longer than then minimum mandated by State law. Surely it cannot be said that bargaining hours of work against the specific quid pro quo entitles the members of the collective bargaining unit to rely on the excess days as being some justification for placing the excess days back into the process at full wages when the choice was made not to work them.

The Employer, likewise, wants the Fact Finder to find that if any instructional days at all were lost, it was not more than one and a half days and that in light of the fact that 182 instructional days were contracted for, the legislative mandate of 180 days of school were met and, therefore, no days need be restored.

A very telling argument is made by the Employer to the effect that to grant the days requested by the collective bargaining representative would penalize it for operating it's schools, when it was in fact in compliance with the law, and penalize the students and teachers who attended school inspite of the job action by a majority of Employees who were within the collective bargaining unit.

There is some considerable merit to that position, as is there merit to the position that there was a failure to bargain in good faith and to discuss fully and deal with proposals and counter-proposals that were not fully formalized.

As previously noted, the impasse reached by the parties was, in the opinion of this Fact Finder, not the result of the activities of any one party but the result of a mutual adaptation of industrial sector, confrontational bargaining such as has recently taken place in one of the major industries in Michigan.

The Legislature, as a primary maker of public policy in Michigan, has indicated in PERA that it is not satisfied that the public interests are met by this type of bargaining and, accordingly, has provided mechanisms, including third-party intervention, to assist the parties in arriving at a conclusion. It is with great interest to this Fact Finder that the final step in the legislatively mandated procedure, fact finding, was not requested by the collective bargaining representative before it determined to withhold services.

This Fact Finder is not concerned with the collective bargaining representative's objectives in taking this position but only with the fact that the collective bargaining representative adopted a position which is contrary to the established public policy of the State.

Neither party should be rewarded nor punished excessively, for that matter, when both were at fault, to one degree or another.

It is this Fact Finder's view that based upon the record made by the parties, there is a substantial question as to whether the students will have the benefit of full equality of opportunity as mandated by the minimum school year (180 days) and, therefore, in order to assure that the students of the City of Grand Rapids have the full benefit of what the Legislature has deemed to be a minimum standard, the Fact Finder awards as follows:

> Two of the days lost shall be restored to the teaching calendar as follows: November 9, 1984 and March 29, 1985. The school year shall not be extended beyond the presently scheduled termination date. The school calendar, except as specifically modified by the within award, shall remain in full force and effect as set forth in Appendix A3 offered in evidence at the hearing on September 10, 1984.

The Fact Finder retains jurisdiction in this matter until a collective bargaining agreement, which reflects the agreements of the parties and award of the Fact Finder, fully executed and ratified, shall be presented to the Fact Finder with a certificate of the parties that the bargaining process has been concluded and has resulted in a binding contract.

Respectfully submitted,

Walter S. Nussbaum

WALTER S. NUSSBAUM

WSN/vam

Dated: October 19, 1984

WALTER S. NUSSBAUM, J.D.
ARBITRATOR & FACT FINDER
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SUPPLEMENT TO FACT FINDING REPORT DATED OCTOBER 19, 1984

On Friday, October 26, 1984, the Fact Finder was contacted by the Grand Rapids Education Association, which indicated some problems with that section of the Fact Finding Report dealing with the restoration of two instructional days and the Board's scheduling of the same.

The Fact Finder contacted the Grand Rapids Education Association and the School Board's attorney and arranged for a conference call on Monday, October 29, 1984, at 9:30 a.m.

In the meantime, the Fact Finder contacted Mr. James Amar of the Michigan Employment Relations Commission for permission to re-open the hearings.

On Monday, the 29th, Mr. Patterson, representing the Grand Rapids Public Schools, indicated that he would not agree to re-open the hearings, that he thought the Fact Finding Report clearly stated an appropriate position, and that the School Board was relying on the Report and adjusting its schedule in accordance with the Report.

The Fact Finder heard argument from the representative of the Grand Rapids Education Association, who argued that because

of the Election Day and other factors, conferences should be re-scheduled to take place on Wednesday, Thursday, and Friday.

The Fact Finder examined certain tape recordings he had made during the course of the proceedings as well as his notes and concluded that the use of the two dates set forth in the Report and the re-adaptation of the calendar was totally and completely consistent with the testimony adduced by the Grand Rapids Education Association.

The Fact Finder declines to modify his opinion and urges the parties to rapidly conclude the remaining steps to completion of the contract in accordance with the Report originally filed.

Respectfully submitted,

WALTER S. NUSSBAUM

WSN/vam

Dated: October 30, 1984

WALTER S. NUSSBAUM, J.D.
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DETROIT, MICHIGAN