

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

JACKSON PUBLIC SCHOOLS

-and-

MERC Fact Finding
Case No. L82-449

JACKSON ADULT EDUCATION
FEDERATION, LOCAL 4276,
MICHIGAN FEDERATION OF
TEACHERS, AFT, AFL-CIO

FACT FINDER'S AWARD

Paul Glendon 2-29-84

BACKGROUND

The Union represents teachers and teacher aides employed in the Employer's Adult Basic Education (ABE) program. ABE is a non-credit program intended to teach basic academic skills to adults whose competency in such skills is at or below the sixth grade level. The bargaining unit consists of twenty-four certified teachers employed in the program, and fifteen teacher aides.

The Union gained certification in 1982, with an initial contract year to begin July 1, 1982. However, the parties have been unable to reach agreement on an initial contract. After unproductive mediation, the Union filed an application with the Michigan Employment Relations Commission (MERC) on June 9, 1983, identifying nine issues to be resolved. In accordance with the applicable statute (MCLA 423.25), MERC "concluded that the matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known."

Pursuant thereto, on October 14, 1983, MERC appointed the undersigned as its Fact Finder and Agent "to conduct a fact finding hearing... and to issue a report with recommendations." The Fact Finder contacted the parties October 24, 1983, offering hearing dates in early November. However, the parties advised that negotiations had resumed and an immediate hearing was not required. Eventually, hearing was scheduled for and held on January 30, 1984, at the Employer's administrative offices. Both parties availed themselves of the opportunity to present facts and arguments in support of their respective positions at that time. In addition, certain documentary evidence was submitted, at the Fact Finder's direction, after the hearing. That evidence was received February 22, whereupon the hearing was closed.

At the hearing, the Union identified the following seven issues as being in dispute, and the parties made their presentations accordingly:

- Payment for inclement weather and act-of-God days
- Payment for loss or damage to personal property on the job

Jackson Public Schools

- Granting of paid sick leave
- Granting of paid personal business leave
- Granting of paid bereavement leave
- Paid holidays and mutual establishment of calendar
- Rates of pay, salary schedule.

In general, and with respect to each of these specific issues, the parties are in fundamental disagreement about the character of the bargaining unit. Specific differences related to this general disagreement will be referred to, of necessity, as the Fact Finder reviews the seven identified issues, which are discussed separately below. But a general summary of this overriding difference in the parties' viewpoints will serve as worthwhile background to the specific discussions which follow.

In the Union's view, this bargaining unit is comparable in all material respects to the units which include teachers and aides in the Employer's K-12 program. The Union emphasizes that its teacher members are certified and the majority of employees in the unit are assigned at least twenty-five contact hours per week, which it equates to full time employment in the K-12 setting. Thus the Union's basic aim is parity for its members with teachers and aides in the K-12 program, and its pay and benefit proposals are structured accordingly.

The Employer sees the ABE teachers and aides as hourly employees. In its view, the fact that many of them have the equivalent of full time schedules is no more than happenstance, a matter of convenience to the employees and/or the Employer, and does not change the basic nature of their employment. The Employer emphasizes that other adult education teachers it employs -- in the Adult High School (AHS) program, in which adults take courses for high school credits -- are compensated strictly on an hourly basis and receive few other benefits. Those teachers are represented by the Jackson Education Association, as part of the general K-12 bargaining unit. The Employer also emphasizes that adult education teachers in all other nearby school districts, and in the vast majority of districts in other approximately comparable metropolitan areas in the state, are treated the same way. The Employer recognizes that parity may be appropriate, but only with the hourly pay and limited benefits of AHS employees, not with the K-12 unit at large.

c Evidence of current employment in the Employer's two adult education programs does not reveal a clear and consistent pattern. Slightly less than half the ABE teachers -- eleven of twenty-four -- are assigned at least twenty-five hours a week. A substantial majority of the ABE aides -- twelve of fifteen -- have such a schedule. Only five of seventy AHS teachers have that many contact hours. In the Adult High School program, slightly more than half the teachers -- thirty-nine of seventy -- have other full time employment. The largest AHS load any of them carries is seven hours. Seven of the twenty-four ABE teachers have another full time job. During 1982-83,

the ABE numbers varied slightly: ten of twenty-one teachers had a schedule of at least twenty-five hours per week; nine of fifteen aides did.

Aside from schedules, there are a number of differences between ABE teachers and K-12 teachers. ABE teachers do not give grades, although they prepare mid-year and year-end reports on all students. They do not have other duties normally associated with K-12 teaching, such as hall supervision, home room assignments or parent conferences. They do not have the same classroom disciplinary concerns which are part of K-12 teaching, nor do they have "mainstream" special education students with learning or other disabilities.

On the other hand, ABE teachers face a different set of responsibilities and challenges unique to their assignments. They deal with adults of limited educational background and motivation. In some cases, the adult students have special needs and disabilities. For the most part, they do not teach in schools, but in a variety of other locations in the community. Because they deal with adult students, their concerns for discipline and security are different than K-12, but they exist nonetheless.

Other distinctions between ABE and K-12 employees have to do with the nature of the educational programs themselves. The Employer is statutorily obligated to provide a K-12 instructional program; funding for the program is derived from local taxes and state aid. There is no such obligation to provide Adult Basic Education. The Employer provides it as a service to the community, in cooperation with other community groups, with funding from Federal and other external sources.

The Employer also presented evidence of severe financial problems in the district, including projected general fund deficits of \$757,935 and \$2,825,856 at the end of the 1984-85 and 1985-86 budget years. However, in response to the Union's allegation that ABE actually is a net revenue producing program for the Employer, it conceded that the program is self sustaining, and would not be continued otherwise.

Rather than repeat it in the course of discussing each of the specific issues in dispute, it is appropriate for the Fact Finder to make a preliminary finding regarding this fundamental disagreement between the parties concerning the nature of employment in the ABE program.

The strongest support for the Union's position that ABE teachers and aides are most closely comparable to their counterparts in the K-12 bargaining units is the fact that a substantial number of them have what amount to full time schedules. In the teachers' case, however, the number is not a majority, as the Union originally

alleged, but slightly less than half. The fact that teachers in both programs are certified also lends some support to the Union's argument.

Most of the other evidence supports the Employer. Qualitatively, there is limited similarity between the teachers' educational responsibilities in the two programs. The programs themselves are vastly different, in all the ways outlined above. Even in the matter of scheduling, the program differences are significant: not only because a majority of the ABE teachers are part time, but also because there is no guarantee the "full time" ABE teachers will continue to have such assignments. The Employer made it clear there is no necessity, nor even any real advantage from its point of view, that there be any teachers assigned as many as twenty-five contact hours a week. Neither is there any certainty the program's course offerings or length will be the same from one year to the next.

It may be true, as the Union asserts, that "work is work" despite the dissimilarities between teaching in ABE and K-12, but that truism does little to resolve this central issue. The question is whether the nature of the work in the ABE program is more closely comparable to K-12, or to the Employer's AHS program and the adult education programs of almost every other school district from which evidence was presented. On balance, the evidence clearly and convincingly favors the latter comparison. Hourly, course-by-course assignments and compensation are better suited to the varied scheduling needs of the ABE program, if indeed they are not an outright necessity, and more accurately reflect the nature of both the program as a whole and the responsibilities of the teachers and aides within it.

Accordingly, the Fact Finder makes the following FINDING AND RECOMMENDATION: the facts do not support the Union's demand for parity between members of this bargaining unit and K-12 teachers and aides in the Jackson Education Association and Jackson Teacher Aide Association bargaining units; the proper basis for comparison regarding the compensation and other benefits appropriate to this bargaining unit is the compensation-benefit package contractually afforded to other adult education employees in this district and others in the surrounding area.

INCLEMENT WEATHER
AND ACT-OF-GOD DAYS

The Union seeks parity with members of the K-12 teacher and teacher aide units, neither of which provides for any loss of pay "when buses do not run because of weather conditions." It also alleges that employees in no other bargaining unit in the Jackson District suffer loss of pay under such circumstances. The Union proposes the following contract language for this unit:

When schools in the District are closed due to inclement weather or other Acts-of-God, teachers shall not be required to report for duty, and shall suffer no loss of pay therefor.

The Employer agrees that K-12 teachers and aides do not have to report, but suffer no loss of pay, if buses do not run because of bad weather. However, it points out that bus drivers get only one-half pay if they do not report, administrators are expected to report even if classes are cancelled, and secretaries are required to report if they can make it to work or if a supervisor can transport them. The Employer also notes that under the new Jackson Education Association contract, which was ratified in early January 1984, AHS teachers are afforded two paid "snow days" annually. It offers a similar benefit to teachers in this unit, with the amount paid to be the hourly compensation the teacher would have received had he/she taught the classes regularly scheduled for the cancelled day.

FINDING (TEACHERS): Protection against "loss of pay" due to lost work opportunity, such as school cancellation due to bad weather, is a benefit typically afforded to salaried employees, whose compensation is not directly tied to hours worked. For workers paid strictly by the hour for hours actually worked, there is a loss of anticipated earnings if work opportunity is lost, but no actual "loss of pay." With ABE teachers being classified properly as hourly employees, there is no compelling case to be made for parity with salaried K-12 teachers. Parity with AHS teachers is appropriate. Thus the Employer's offer of two "snow days" for ABE teachers should be adopted.

FINDING (AIDES): For aides, the facts are different. K-12 aides represented by the Jackson Teacher Aide Association also are hourly employees, but they are contractually protected against "loss of wages" for dismissal of school "due to weather conditions." This makes the Union's plea for parity for aides more convincing. However, it would be inconsistent to grant ABE aides a benefit not enjoyed by the teachers they assist. Therefore, the more persuasive comparison is between similar programs -- AHS and ABE, rather than K-12 and ABE -- not similar positions within dissimilar programs. ABE aides should receive the same contractual benefit as ABE and AHS teachers: two paid "snow days."

LOST OR DAMAGED PROPERTY

Here too the Union seeks benefits comparable to those enjoyed by K-12 teachers and aides. It points out that teachers are guaranteed reimbursement "for loss, damage or destruction of clothing or personal property which is used for instruction," subject to several conditions and up to a \$100 maximum per loss, under the Jackson Education Association contract. In the K-12 aides' contract, there is provision for "a locked area for personal belongings for

protection from potential theft," but no reimbursement for employees who fail to use such locked area. The Union complains that no such locked area is provided for its members, and proposes the following language for their protection:

The Employer will reimburse the employee for loss or damage to personal property of the sort that is normally worn or brought to the classroom in connection with any physical assault on said employee in the course of employment, provided the employee was acting in accordance with and within the scope of Board policy, and unless such loss is covered by insurance or is reimbursable from other sources.

The Employer contends it cannot be responsible for loss of ABE employees' personal belongings because many ABE classes are held in facilities over which it has no control. It also points out that the benefit for K-12 teachers is subject to a number of stringent conditions, and that although K-12 aides are provided locked areas they receive no reimbursement for lost property. Most important, in the Employer's opinion, is the fact that AHS teachers have no such benefits under the Jackson Education Association contract. That being the most comparable group, in the Employer's view, it maintains there is no justification for making such benefits available to ABE teachers and aides.

FINDING: The Employer's lack of control over the conditions which might lead to such losses in many cases and the AHS comparison are the most relevant and significant considerations here. Thus it is recommended there be no contractual provision to reimburse ABE teachers and aides for lost, stolen or damaged personal property.

PAID SICK LEAVE

Starting from the premise that "employees of the Adult Education Federation are full-time employees," the Union argues they should have the benefit of a sick leave "bank." It would contain ten paid sick days annually "for the period of September - June, and one additional day per month of summer employment," covering illness of the employee or his/her immediate family. The Union proposes detailed language for the creation and administration of such a bank. In support of its proposal, the Union points to provisions for paid sick leave, in varying amounts and under varying conditions, in contracts covering K-12 teachers and aides, custodians and bus drivers, secretaries and administrators in the Jackson District.

The Employer challenges the Union's starting premise. It argues none of the ABE employees are full time in the same sense these other employees are, because their employment depends entirely on the make-up of the ABE program from time to time, and on the number of

courses they are assigned in that program. It also refers to employment statistics showing that the majority of ABE teachers, as well as several aides, do not even have "full time" equivalent schedules. The Employer again calls attention to the absence of paid sick leave for AHS teachers in their contract. It argues there is no proper basis for providing such a benefit to their counterparts -- teachers or aides -- in the ABE program.

FINDING: The Union's basic premise is faulty, both factually and conceptually. The record shows that a majority of ABE teachers are not assigned sufficient contact hours to meet the Union's own definition of "full time" employment. It also shows there is neither a guarantee of nor any necessity for full time employment for any ABE employee. They are employed strictly course by course, hour by hour, as are AHS teachers. They have no stronger claim to paid sick days than AHS teachers. This benefit should not be part of the Adult Education Federation contract.

PAID PERSONAL BUSINESS LEAVE

Starting from the same premise, the Union seeks two days of paid personal business leave annually, with accrual of unused days to the sick leave bank, in the cause of "parity and humane treatment" for its members. It asks that such leave be allowed in half-day blocks, requested three days in advance except in emergencies. The Union points out that administrators, K-12 teachers, custodians and bus drivers all get two paid personal business days a year, and K-12 aides and secretaries get one day. It argues that ABE teachers and aides deserve comparable benefits.

The Employer again challenges the Union's beginning premise. It emphasizes that AHS teachers do not get paid personal business leave. It also calls attention to restrictions which apply for those employees who do get it, and to the fact that in every case such leave is charged against sick leave.

FINDING: There is even less justification for paid personal business leave for ABE employees than for sick leave or snow days. Without repeating earlier comments regarding the basic nature of the ABE program and employment therein, it is sufficient to note that paid personal business leave is not typically available to such employees in general, and definitely is not available to the Jackson District employee group -- AHS teachers -- most similar to ABE teachers and aides. It is not appropriate for this unit.

PAID BEREAVEMENT LEAVE

The Union presented language from other agreements showing that K-12 teachers and administrators are entitled to bereavement leave up to five days, and aides, custodians, bus drivers and secretaries get three days. It proposes the following language for

ABE teachers and aides:

Employees shall be granted up to five (5) days following a death in the immediate family (immediate family includes employee's spouse, children, parents, foster parents, grandparents, parents-in-law, brothers- or sisters-in-law, brothers, sisters, or any other person for whose financial or physical care the employee is primarily responsible).

The Employer notes that the Union's proposal calls for broader bereavement benefits than are provided to any other employee group in the District. It also points out that AHS teachers do not have this benefit either, and argues there is no justification for giving it to ABE teachers or aides.

FINDING: Given the fundamental nature of ABE employment, bereavement leave is not an appropriate benefit for teachers and aides employed in the program.

PAID HOLIDAYS AND CALENDAR

The Union complains that there is no established school calendar for the ABE program, and that ABE teachers and aides are not paid for any holidays. It proposes the following language to cover these matters:

The school calendar shall be mutually developed by the parties and attached hereto as Addendum A.

A. The following days shall be recognized and observed as legal holidays: New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, Christmas Day, Martin Luther King Day (Monday closest to January 15), April 1, 1983 (1/2-day), Washington's Birthday (third Monday in February), and July 4. Whenever any of the above holidays falls on Saturday, the preceding Friday shall be observed as the holiday. Whenever any of the above holidays falls on Sunday, the following Monday shall be observed as the holiday.

B. There will be no school on the day before or after any legal holiday, if such holiday is on Tuesday or Thursday, respectively.

Paraprofessionals shall follow the school calendar of professionals, except for in-service days which are separately scheduled. The school calendar shall be attached hereto as Addendum A.

In support of this proposal, the Union cites the holiday provisions of the District's contracts with the K-12 teacher and aide units and the secretaries. It alleges that K-12 teachers get twenty-three paid holidays, including the Christmas - New Year break in the school calendar. Again it argues that ABE teachers and aides deserve similar treatment.

The Union also claims such treatment is required by statute. It refers to Section 1175 of the School Code of 1976 (MCLA 380.1175), under which certain days are proclaimed to "be public holidays in the public schools of this state," and which provides that the "salary of school officers and teachers shall not be affected by reason of the dismissal of school on these specified days."

The Employer disputes the Union's interpretation of K-12 teachers' holidays. It points out that the Jackson Education Association contract specifically identifies 7-1/2 days as "legal holidays." It asserts that the "Christmas vacation," designated as such in the same Article of the teachers' contract, is not and never has been considered a holiday period. The Employer asserts that K-12 teachers' pay is calculated on 180 days of school, and paid in the form of regular salary according to the scale agreed upon with the Jackson Education Association. It says the Christmas vacation period is not included in those calculations.

More important, in the Employer's view, is the fact that AHS teachers receive no holiday pay. As on every other point, it maintains that is the only fair comparison, based on which there is no justification for paid holidays for ABE teachers and aides. It also challenges the Union's statutory argument with respect to holidays. The Employer's position is that ABE classes are not dismissed on holidays, they simply are not scheduled on those dates; and ABE teachers' and aides' pay is not affected by that, because they are paid only for classes they actually teach.

As to the establishment of the annual school calendar, the Employer contends that cannot be a negotiated item, because it must be able to match ABE schedules to those of other school systems (for example, the county intermediate schools) and community agencies and groups with which courses are offered.

FINDING (CALENDAR): As the Employer observes, the school calendar for the ABE program cannot be established "in a vacuum." It depends on the availability of outside funding and the requirements for payment of such funds, and upon the needs and desires of local agencies and groups who wish to sponsor or coordinate such adult education activities. Under these circumstances, the Employer must have the discretionary authority to set up the ABE calendar without negotiation with the Union.

FINDING (HOLIDAYS): ABE courses are set up to meet for a certain number of sessions spread over a certain number of weeks. Like AHS teachers, ABE teachers and aides are paid by the hour for the sessions to which they are assigned. They do not lose earnings, or even the opportunity for such earnings, because of holidays, so Section 1175 of the school code does not apply. Therefore holiday pay is neither necessary nor appropriate for this unit.

RATES OF PAY

The Union proposes a salary schedule for ABE teachers giving them full parity with K-12 teachers, including incremental increases for years of service and educational attainments. It proposes to prorate such salaries in the same ratio as the ABE teacher's "teaching load bears to full time employment in the K-12 bargaining unit." For aides, the Union also proposes a salary schedule, rather than hourly compensation, with longevity increases ranging from one to fifteen years and three "degree lanes," for high school diploma only, high school plus fifteen academic hours or aide certificate, and high school plus thirty academic hours. The aides' scale would range from a minimum salary of \$8,000 to a maximum of \$11,900, based on a thirty-period assignment. Pay for assignments of fewer than thirty hours would be proportionally lower.

For reasons which already have been discussed, compensation for ABE teachers and aides should remain on an hourly basis. The questions which remain are whether the rates offered by the Employer are reasonable, and whether there should be additional pay grades or steps based on employees' education or length of service, or both.

The Employer now offers ABE teachers the same hourly compensation as AHS teachers receive. The Jackson Education Association contract defines that rate as a multiple of the B.A. Base salary for K-12 teachers: 0.0008947 for AHS teachers in their first year of such employment; 0.0010000 thereafter. According to the Employer, that computes to hourly rates of \$14.33 and \$16.01 respectively, compared to the ABE teacher's existing rates of \$13.13 and \$14.68. The latter rates have been in effect since the 1981-82 school year, when they were the same as AHS teachers' rates. Under the Jackson Education Association contract, there was an 8% increase in the base rate for the 1982-83 school year, that being the final year of a three-year contract. The current contract includes a 1% increase this year, and another increase of 4% to 6% next year, the exact amount depending on the level of state aid received by the district. The Employer is not offering a retroactive increase for ABE teachers for 1982-83, but does offer the same potential increases for 1984-85 and 1985-86.

The Employer offers no wage increase for the aides, either retroactively or currently. Their hourly rate, irrespective of educational attainment or length of service, is \$4.58. The Employer

argues there could be no retroactive wage increase for 1982-83, because except for the K-12 and AHS teachers covered by the continuing Jackson Education Association contract all employees in the district had contract extensions with frozen wages that year. However, it does not completely rule out increases for 1983-84 and beyond comparable to those percentage increases negotiated with other employee groups.

The Employer presented a comparison purporting to show that ABE teachers' and aides' hourly rates are substantially higher than those of adult education employees in any other school district in the surrounding area. It presented current data for Jackson County Intermediate School District (JCISD), Columbia, East Jackson, Napoleon, Northwest, Springport, Western and Concord. The highest hourly rate for teachers in that group was \$13.00, for JCISD; the lowest was East Jackson, at \$8.50. The highest rate for aides was \$4.50, in Western; the lowest was in Columbia, at \$3.35. Half the programs do not employ aides. It also presented 1982-83 data for Ann Arbor, Battle Creek, Grand Rapids, Kalamazoo, Monroe, Niles, Willow Run, Ypsilanti, Pontiac and Lansing. Hourly rates for teachers in those districts ranged from a low of \$8.00 at the beginning step in Willow Run to a high of \$15.55 (at the top of a range which began at \$9.72) in Lansing. Only the latter figure was higher than Jackson. For aides, the highest rate was \$5.83, at the fourth step of a four-step progression, in Battle Creek; the lowest was \$3.35, the bottom of the range in Niles.

Although it does not challenge the data presented by the Employer, the Union suggests they are meaningless unless compared to the salaries of K-12 teachers in the same districts. That suggestion is no more persuasive than the Union's basic argument for parity between ABE and K-12 teachers. The comparison should be with other teachers and aides in similar programs.

FINDING (TEACHERS): Based on the foregoing data, there is no compelling reason why ABE teachers and aides should receive a higher basic rate of pay than is offered by the Employer. However, the teachers' rates should be increased retroactively to cover the 1982-83 school year, with the same percentage increase for that year as was received by AHS teachers. The increase offered for the 1984-85 school year also is reasonable. The Board would prefer a three-year agreement, extending retroactively to July 1, 1982 and prospectively to the end of the 1985-86 school year. That would not be reasonable; a three-year contract is more realistic, given the infancy of the collective bargaining relationship and the year to year uncertainties of the ABE program. Under the new Jackson Education Association contract, AHS teachers get one hour of paid preparation time if they work fourteen hours or more per week. ABE teachers should get the same benefit, beginning with the 1983-84 school year.

FINDING (AIDES): ABE aides are not so clearly at the top of the scale in comparison with other adult education programs. Their

hourly rate is slightly higher than two of the four other programs which employ aides in the surrounding area, and substantially higher than the two others. But it falls in the lower middle range when compared to programs in other metropolitan areas. The Employer's argument against a retroactive increase is unconvincing; the fact that other employees' compensation was frozen in 1982-83 is not controlling, because the ABE program generates its own funding. Therefore it is recommended that the basic rate for ABE aides be increased for each year of the contract by the same percentage as ABE teachers' compensation.

The evidence does not support the Employer's resistance to additional wage steps for ABE teachers and aides. Hourly wages for aides in the Employer's K-12 program are arranged in three grades (according to education) and seven steps (according to length of service). It is also noteworthy that five of the six metropolitan districts cited by the Employer which employ aides have a wage range or several steps, rather than a single rate for all aides. The same is true for adult education teachers in seven of those districts, and for two of the districts in the surrounding area. The district's own AHS teachers have only two steps: one for the first year of employment, the other for every year thereafter.

Even though the AHS program is a proper standard of comparison for ABE with respect to the basic nature of the teachers' employment, that does not necessarily mean the identical hourly rate structure should apply in both cases. It must be observed that the constituency of the two bargaining units is decidedly different. For a good many, albeit not quite a majority, of the teachers in the ABE unit this is their primary, full time employment. That is true for less than ten percent of the AHS teachers. The primary constituency in that bargaining unit as a whole obviously is full time K-12 teachers, not adult education teachers. Most of the ABE teachers have taught in the same program for quite some time. There is no reason to think that experience or educational attainments are any less important, or any less deserving of monetary recognition, in adult education than in K-12.

FINDING: For the reasons set forth in the preceding paragraph, it is found that the Employer's opposition to additional wage grades and/or steps for both teachers and aides, based on educational attainment and years of service, is unreasonable. It is recommended that the contract contain multiple grades and steps for hourly rates in both positions, similar in kind and number to those provided for teachers' salaries and aides' wages in the K-12 program.

Dated: February 29, 1984



Paul E. Glendon
MERC Fact Finder