

6/9/81

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~~Kalamazoo City School District~~

1306

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Impasse between

Kalamazoo Public Schools

-and-

United Automobile, Aerospace, and
Agricultural Implement Workers of
America; Technical, Office and
Professional Local 2150

MERC case Nos. G60 E-1060
and 1061

Del Elkin 6-9-81 /

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FACT FINDER'S REPORT AND RECOMMENDATIONS

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Introduction

Following a representation election, supervised by the Michigan Employment Relations Commission, the UAW was certified as the exclusive collective bargaining agent for certain administrative employees on May 9, 1980. In that election, 80 of the 82 eligible voters cast their vote for the UAW, with one vote void. Bargaining for the initial contract began on September 9, 1980 and continued for 22 bargaining sessions. Unable to reach complete agreement, impasse was declared on January 30, 1981. The parties jointly agreed to petition for fact finding and, accordingly, the undersigned was selected by the parties as Fact Finder.

The parties have been bargaining for a two-year contract and have stipulated that when agreement is reached, it is to be retroactive to July 1, 1980.

Kalamazoo Public Schools

Hearing was held on March 24, March 25, and April 15, 1981, during which the parties presented evidence and argument in support of their respective positions. Post-hearing briefs were submitted by both parties and the record was closed on May 22, 1981

Appearances

For the Board

John Manske, Attorney
John Kneas, Attorney
Mahlon L. Lantz, Director of Employee Services

For the Union

Judith A. Scott, Assistant General Counsel, UAW
Peter Unterweger, Research Associate, UAW
Philip Martinez, Principal
Richard Servis, Dean of Students

The Issues in Dispute

The parties have identified the following major areas of disagreement: (1) salary, (2) reduction in force and seniority provisions, (3) agency shop, and (4) arbitration.

Salary

I. Proposals of the Parties

1. The Union proposes:

- a) Establishment of a classification and salary grade schedule in which each job classification is placed in one of six salary grades.
- b) Establishment of an eight-step salary schedule, for each of the six grades, with automatic annual movement to the next higher step until reaching the maximum. Salaries would be indexed to the teachers' M.A. maximum with four percent of that amount added at each step. Twelve month employees would receive 14 percent more than ten month employees at each step.
- c) For 1980-1981, a two-part increase:
 - * a 12 percent across-the-board increase retro-active to July 1, 1980, and
 - * after the 12 percent increase is calculated, placement on the next higher step on the salary schedule above that amount, resulting in an additional increase which would vary for each individual. The Union estimates the average additional increase to be 2.1 percent for a total average increase of 14.1 percent.
- d) For 1981-82, a 10 percent across-the-board increase plus an automatic step increase for those below the maximum, with a 2 percent increase for

employees already at the maximum.

2. The Board proposes:

- a) For 1980-81, the salaries of all bargaining unit members, with the exception of those employees previously identified by the District, shall be increased by 10 percent effective at the start of the employees' work year.
- b) For 1981-82, the salaries of all bargaining unit employees shall be increased by 9 percent, effective at the start of the work year.

An employee evaluation model will be established by the parties and the results of employee evaluations shall determine the distribution of a sum of money equal to 1 percent of 1981-82 bargaining unit salaries.

3. The disagreement focuses on these areas:

- a) The amount of salary increase for 1980-81 and 1981-82.
- b) Introduction of a salary classification system with automatic step increases.
- c) The development of an evaluation system to determine one percent of the 1981-82 increase.

II. Contentions of the Parties

The Board insists that the principal issue relative to salaries is the present financial condition of the school district and it draws attention to major financial problems that affect its ability to pay additional salary increases. (Bd. Exh. A) Chief among these is a loss of State aid for 1980-1981 of approxi-

mately \$400,000 and a court action requiring the Board to repay to the State about \$551,000 which was spent for E.S.A.A. programs during 1979-80, thus creating an anticipated deficit for 1980-81 of approximately \$950,000, based on a 10 percent increase for school administrators. Also, it is the position of the Board that administrators should be evaluated and that the evaluations should enter into the determination of administrator compensation. The Board presented data to show that if the administrators' salaries have not kept up with the cost of living neither have the salaries of other workers nation-wide. As to the comparison with Kalamazoo teachers, the Board argues that the use of percentages instead of dollar amounts results in a bias which favors the position of the administrators. By comparing dollar increases of teachers' and administrators' salaries from 1975 to 1980, rather than percentage increases, the Board concludes that the cumulative increases for administrators was \$1,206 more than for teachers.

The Union, on the other hand, using data on the average gains for those Kalamazoo teachers and administrators who were continuously employed throughout the 1976-80 period, concludes that increases in administrators' salaries in recent years compare unfavorably with increases in teachers' salaries. The Union's data show that teachers employed during that period received salary increases totaling 32.6 percent while administrators' salaries rose 25.7 percent. The Union's calculations further indicate that the Board's salary proposal would represent an increase since 1976 of 38.37 percent, while the teachers' increase

for the same period was 46.17 percent. The Union's proposal, however, would raise the administrators' increase to 43.57 percent, thus narrowing the gap between administrators' and teachers' increases. In estimating the average hourly compensation for the two groups, the Union asserts that by 1980 administrators were actually earning less, on the average, than teachers.

The Union notes that Kalamazoo teachers received an increase at the Master's level for 1980-81 ranging from 10 to 17.2 percent, including increments, at various steps of their 14-step salary schedule (Union Exh. 14). For 1981-82, the teachers' contract calls for a 10 percent increase, plus increments.

For the calendar year 1980, the Union introduced data to show that the Consumer Price Index advanced by 10.9 percent (Union Exh. 5b) and assuming the 10 percent increase offered by the Board for 1980-81, administrators for the past five years will have fallen further behind the inflation rate than have teachers (Union Exh. 3).

Regarding administrative salaries in other school districts, Union exhibits indicated that salaries for Kalamazoo principals and secondary assistant principals at the maximum level were the lowest when compared to Lansing, Grand Rapids, Jackson, Ann Arbor, Muskegon, Portage, Saginaw, and Okemos (Union Exh. 12 and 13).

In support of its proposed grade-step system for salary increases the Union points out that such a system has been very helpful to the teachers in achieving their salary increases. By contrast, the Union submits that the economic position of

the administrators has deteriorated because their salaries did not advance automatically but were subject to a merit system which the Union feels was abused.

The Union rejects the Board's position that it is unable to fund the Union's wage proposal. It asserts that the Board's financial problems are common for Kalamazoo and other Michigan districts. It contends that when the Board granted large wage increases to its teachers in September, 1980, it was aware of many factors it now argues should excuse it from granting the UAW wage demand. The union maintains that it would be grossly unfair to make 58 administrators bear the burden of the system's financial problems.

Regarding the 1 percent component of the 1981-82 Board-offered increase, the Union rejects the concept of merit as a basis for increases. It asserts that its use in the past created morale problems, was based on subjective criteria, contained factors too vague or irrelevant to implement, and had actually been distorted at times in order to keep salaries within budgetary constraints. The Union rejects the Board's offer to negotiate another evaluation system, contending that it would be practically impossible to negotiate on an objective basis. The Union notes that the Board has not shown that there exists anywhere a merit system which can be validated or protected from subjective assessments which distort it.

III. Discussion and Recommendation

One could hardly disagree with the major Union contention that, as a matter of equity, its members are entitled to equal

consideration with the teachers in the Kalamazoo Public Schools. The Board is able to dispute the Union's claim that it has been denied that equity because both parties, in making their comparative studies of the salary increases for the two groups, have selected somewhat different time periods, samples of personnel, and methods of comparison. From its study, the Board concludes that in the past six years the administrators have maintained their relative salary position with the teaching staff because of a cumulative difference in their salary increases in those years of \$1,206 more than teachers. However, because administrators' average salaries are higher than teachers' salaries, comparison of increases by percentages rather than by absolute dollar amounts is more meaningful. The same Board data showing higher dollar increases for administrators reveals that for the same period teachers' average salaries increased by 43 percent, as compared with 37.5 percent for administrators. A similar difference in favor of the teachers, when expressed in percentages, is confirmed by the Union's study, although for a slightly different time period and a somewhat different sample.

As to how Kalamazoo administrators' salaries rank with the salaries in other school districts, valid comparisons are difficult to make. Many other factors must be taken into account when comparing salaries, such as length of the work year, whether increases are based on merit, and many other conditions of an administrator's employment. Moreover, the data offered by the Union was not fully documented nor complete. Nevertheless, the record at least strongly suggests that Kalamazoo principals and

assistant principals are paid less than most of their counterparts in comparable Michigan cities.

In view of the foregoing, one must conclude that the Board's offer of a 10 percent increase for each of the two contract years, an offer substantially less than the increases already granted to the teachers, is inequitable. However, in fashioning a recommendation, the Board's projected deficit and other financial problems must be taken into account and argues against granting the Union's proposal in full. But a reasonable measure of equity for a key group of employees is a matter of top priority. In the judgment of the Fact Finder, salary increases approximately proportionate to those granted to the teachers, would achieve that objective, and is warranted under all of the circumstances.

Accordingly, the Fact Finder recommends that funds be allocated to provide an average salary increase of 12 percent for 1980-81, and an additional 12 percent for 1981-82. If the incremental step system urged by the Union is implemented by the parties, (see below) then for 1980-81, a 10 percent across-the-board increase plus placement on the next highest salary step, should achieve the recommended 12 percent average increase. For 1981-82, an across-the-board increase of 8 percent, plus advancement of one salary step with a 2 percent increase for those at the maximum would also approximate a 12 percent average increase.

The grouping of all classifications into six salary grades and the establishment of an incremental salary schedule for each grade, each indexed to an agreed-upon base salary such as the

teacher M.A. maximum is a reasonable means of rationalizing the system of compensation. In its general form similar plans can be found in the administrators' collective agreements in other districts, and the Fact Finder recommends adoption in principle. The record is not sufficiently complete to support an endorsement of each component of the compensation system, i.e., the grading of each classification, the relative compensation for each salary grade, added payment for 12 month employees, and similar matters. The entire plan was developed unilaterally, but the Union and the parties should now negotiate agreement on the details.

There remains the question of the Board's proposal to make a small part of the 1981-82 increase contingent on the results of an evaluation procedure yet to be jointly developed by the parties. There seems to be general agreement that the evaluation system utilized in previous years did not achieve general acceptance and contributed to morale problems. During almost a year of negotiations, the parties failed to reach agreement on a new evaluation system. In view of this history and the difficulties inherent in developing an objective evaluation system, the Fact Finder recommends that the Board's proposal to make 1 percent of the 1981-82 increase contingent on evaluation not be implemented for this contract.

Reduction in Force and Seniority

I. Position of the Parties

The parties differ on the criteria for layoff and recall, particularly on the weight to be given to seniority. In the

Union's proposal, the Board "will lay off the lowest seniority employees in that classification." In the Board's proposal, "such reduction will be based on the following factors: ability, experience, past performance, administrative tenure in position, and seniority. When the combination of these factors is relatively equal, seniority shall be the deciding factor."

As to a bumping procedure, the Union proposal provides that a laid-off employee may exercise his seniority by bumping into an equal or lower classification "where the employee is qualified for the position by previous related training, experience, or education to perform the necessary work requirements." The Board would permit bumping only "provided the laid-off employee has performed the position during his/her employment with the Kalamazoo Public Schools..."

The most important difference that separates the parties on this provision is the weight to be accorded to seniority when a reduction in force is necessary. In the Union's view, common sense dictates that an employee who has been able to perform the job in one position is qualified to perform the duties of the same classification in another location and, therefore, the more senior administrator should bump a less senior administrator.

The Board, however, in proposing the use of the concept of "relatively equal" factors, is willing to make seniority a major, but not the exclusive consideration. As to the criteria for bumping into other classifications, the Union stresses that its proposal assures that only qualified individuals will be

eligible and that the Board will have the authority, subject only to possible scrutiny by a neutral arbitrator, to determine whether an employee is qualified to take a position in another classification. The Board, however, is concerned that the Union's proposal could result in large scale bumping in which other than the most qualified individuals would be assigned duties with which they were, at the very least, unfamiliar.

The parties are also not in complete agreement on a transfer and promotion policy. The Board would base the policy on "ability, experience, past performance and seniority. When the combination of these factors is equal, seniority shall be the deciding factor." The Union would substitute the term "relatively equal" for "equal." It considers this substitution to be a compromise on an issue which is less critical than layoff and which would give the parties an opportunity to work out a mutual understanding of the terms "ability, experience, and past performance."

Also, with respect to the past procedure of assigning laid-off administrators to teaching positions with full seniority, the Union seeks assurance that the practice will continue. The Board's proposal expresses its intent to do so but, "subject to the outcome of a grievance that has been filled by the Kalamazoo Education Association challenging such practice." The Board also seeks the right to place those administrators excluded from the administrators' bargaining unit "in a (administrators') bargaining unit position that he/she has previously held for the Kalamazoo Public Schools if such administrator is removed or if his/her position is eliminated." The Union argues that if

the Board insists on the right of excluded administrators to bump into the UAW bargaining unit based on their own seniority, the Board, in turn, should protect UAW administrators if they are barred from bumping into the teacher ranks because of an adverse grievance ruling under the teachers' contract. The Union proposes a provision similar to one adopted by the Detroit Public Schools and their administrative bargaining unit to deal with such a circumstance, in which it was agreed "the employment by the Board of any OSAS member affected by such restriction will not be terminated by application of Section 6.3 (layoff and recall provision) of this agreement."

Regarding an affirmative action policy as it affects layoff, the proposals of the parties differ. The Board proposes the following language:

The parties are committed to the goals and principles of affirmative action as established by state and federal statutes, regulations and guidelines; as established by the federal courts; and as established by the Board of Education (Policy 4120). It is understood by the parties to this Agreement that such goals and principles shall be considered in the decision-making process effected by this Article in that such goals and principles may be a determining factor in individual decisions made pursuant to such Article.

The Union's proposal is as follows:

The parties are committed to the goals and principles of affirmative action for both minorities and females. It should also be understood that it is the intent of Section B to insure the spirit of desegregation. It should be understood that the role modeling and positive image building function of the administrators should be perpetuated.

To maintain the affirmative action program, it is understood that seniority will cease to be the determining factor in a circumstance where its application would cause the per-

centage of minority administrative personnel to decline below the level at the point the layoff occurred or the level set by applicable state, federal or judicial guidelines or orders; including the 20 percent minimum staffing level established by Judge Noel Fox. Recognition of district-wide seniority is given to insure affirmative action objectives for female administrators.

The Union urges that the Board's proposal is too vague and and ambiguous to be effective, while the Union's proposal includes a 20 percent quota for minority administrators. It notes that this is the very standard set forth by Judge Noel Fox in the Kalamazoo School desegregation case.

In defining seniority, the Board would date seniority from the last date of hire into the school district for employees in the bargaining unit on the active rolls "on the date this Agreement is executed." The Union would apply this provision to employees in the bargaining unit on "the date of the Union's certification, May 9, 1980." The Union objects to the Board's proposal because it would adversely affect 24 administrators who were laid off and placed into the teacher ranks in September, 1980.

II. Discussion and Recommendation

Regarding the criteria for layoff, the crux of the dispute is whether seniority shall be the sole criterion (on the assumption that all employees within a classification are capable of performing the work), or whether seniority will play a far lesser role when combined with ability, experience and past performance. The positions of the parties reflect their conflicting interests. For bargaining unit members it touches upon their basic job

security and no doubt this wish for security in the event of a layoff was a major motivation for the near-unanimous decision of the administrators to opt for collective bargaining. On the other hand, the Board has a legitimate concern to have the flexibility, in the event of a layoff, to retain the administrators it judges to be best suited to the changed circumstances.

It is generally recognized that as a matter of equity long years of service and commitment to an employer creates an entitlement to preferred treatment with respect to co-workers with fewer years of service. As a standard of selection among competing employees, seniority has a clear advantage in that it is totally objective. By contrast, the other factors proposed by the Board, especially ability, are inherently difficult to measure and consensus on a decision involving these subjective criteria is difficult to achieve. Thus, while these criteria would provide the Board flexibility, their use would be divisive and destructive of administrator morale. Presumably because the seniority criteria is objective and minimizes uncertainty and discord, it governs layoffs in a great many teacher collective agreements, including the Kalamazoo Education Association. While not as common in administrator collective agreements, a layoff provision based primarily on seniority was found in a significant number of such agreements surveyed by the Board (Bd, Exh. A, p. 35).

While recognizing that the use of seniority as the only criteria for layoff denies to the Board any flexibility in its layoff decisions, in the judgment of this Fact Finder this is compensated for by the general stability and administrator

cooperation that would result. Accordingly, the Fact Finder recommends that in the classification to be reduced, the Board will first lay off the employee with the least district-wide seniority, as proposed by the Union.

However, with respect to bumping into a different classification the Fact Finder agrees with the Board that the Union's proposal could have a serious adverse affect on efficiency. Where a senior administrator bumps a less senior person in the same classification the position is filled by a person who has had experience in that classification and has functioned satisfactorily. But bumping into another classification could present some problems. Under the Union's proposal, it would be possible for a person with the requisite educational background but without experience or demonstrated competence in that classification to displace a person of proven competence on the job. Moreover, the displaced administrator might, in turn, displace a less senior person in another classification so that again an inexperienced person could be displacing an administrator of proven ability. Large scale bumping of this kind has the potential for causing serious disruption and, in the judgment of this Fact Finder, the need to keep each administrative position staffed by an experienced and competent person outweighs the advantages of strict adherence to the seniority principle. The Board's proposal to limit the privilege of bumping into another classification to administrators who formerly held a position in that classification would assure that these positions are adequately staffed. Accordingly, the Fact Finder recommends adoption of

the Board's proposal.

The dispute on a transfer and promotion provision centers on the relative weight to be given seniority. The Union's preference for the term "relatively equal" would cause less weight to be given to ability, experience, and past performance and more to seniority. In the Fact Finder's opinion, as these are voluntary moves where basic job security is not an issue, the rationale in favor of seniority does not apply with the same force as in layoffs. The legitimate right of the Board to exercise its judgement in assessing the fitness of applicants for transfer and promotion, particularly the latter, warrants a lesser role for seniority. The Fact Finder recommends adoption of the Board's proposal on this issue.

Both the Board's wish to give to excluded administrators the right to bump into a bargaining unit position that he/she previously held and the past practice of placing laid-off administrators in teaching positions with full seniority are linked to the outcome of the pending grievance by the Kalamazoo Education Association protesting the latter practice. It would appear that the continuation of the practice of placing administrators in teaching positions must be made subject to the outcome of the grievance, as proposed by the Board. If laid off administrators are eventually barred from the teachers' ranks, the Union's solution of simply requiring the Board to guarantee continued employment to all administrators is not feasible. Notwithstanding that such a provision is found in the administrators' collective agreement with the Detroit Public Schools, the

Kalamazoo School District cannot be expected to commit itself to permanent employment for any group of its employees after it is determined their services are no longer needed. However, if bargaining unit administrators are banned from returning to teaching, then they ought not be required to accept excluded administrators into their ranks. The Fact Finder recommends that the Board's proposal regarding placement in teaching positions be adopted (Section F, Bd. Exh. K). It is also recommended that excluded administrators be permitted to bump into the bargaining unit as proposed by the Board (Section G. Bd. Exh. K), but only if the past practice of placing administrators in the teachers' unit with full seniority can be continued.

With respect to affirmative action, the crucial difference between the parties is the Union's insistence on a specific quota of a 20 percent minority administrative staffing level. The use of racial quotas necessarily raises the concomitant complicated and controversial issues of seniority versus race and what some regard as "reverse discrimination." These matters are still being litigated in the courts, both nation-wide and with regard to the Kalamazoo schools specifically, and the courts will ultimately decide. The Board's proposed provision incorporates the principle of affirmative action without restriction to a specific quota and would not be inconsistent with any policy which the courts may finally establish, including establishment of a mandatory minority quota for administrators. The Fact Finder, therefore, recommends adoption of the Board's proposal regarding affirmative action.

Regarding the status of the 24 administrators who were laid off effective September, 1980, the Fact Finder must agree with the Union's position that they should be entitled to all rights under the agreement when it is finally negotiated. They were members of the unit when it was certified on May 9, 1980 and were members on July 1, 1980, the date the agreement here in dispute will take retroactive effect. There is no justification for denying them seniority rights under that agreement because of the parties' failure to reach accord on a contract before they were laid off.

Agency Shop

I. Position of the Parties

The parties are in agreement on a requirement that employees must tender an initiation fee and become members of the Union or pay an equivalent service fee. The dispute centers on the eligibility requirements for individuals who may make charitable contributions in lieu of the membership or service fee. The Union proposes that:

...any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations may elect to pay sums equal to the Union's dues and initiation fees to a nonreligious, non-labor organization charitable fund exempt from taxation under Section 501 (c) (3) of Title 26 of the Internal Revenue Code, chosen from a list of three such funds designated in Appendix A of the Contract...

The Board's proposal is shown below in pertinent part:

...any employee because of religious or other personal belief who objects to joining or financially supporting labor

organizations may elect to pay sums equal to the Union's dues and initiation fees to a non-religious, non-labor organization charitable fund exempt from taxation under Section 501 (C) (3) of Title 26 of the Internal Revenue Code, chosen from a list of ten (10) such funds designated in Appendix A of the Contract...

II. Discussion and Recommendation

The Board argues that an individual's moral and personal beliefs may not fit neatly into the tenets of a "bona fide religious body," as required by the Union's proposal. But the Board's proposal to exempt a unit member from the obligation of making payment to the Union because of "personal belief" is so broad that, for all practical purposes an employee could elect not to make such payment for any reason. This wide loophole seriously weakens the agency shop principle. As pointed out by the Union, the agency shop is supported by public policy as reflected in the 1973 amendment to the Public Employment Relations Act and upheld by the Michigan courts:

It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative. (emphasis added)

Moreover, the Board has already agreed to the traditional agency shop principle with the teachers' association and several of the other employee groups with which it bargains. In those agreements, employees must either join the union or pay an equivalent service fee. It is difficult to understand the Board's

reluctance to accept the Union's proposal with its provision for a limited exemption from payment to the Union, when its contracts with the other groups contain no exceptions for any reason. Moreover, the UAW Constitution offers administrators due process protection regarding the use of their dues or service fees, in that a member has the right to object to the expenditure of any portion of his/her dues for activities primarily political in nature.

For all the foregoing reasons, the Fact Finder recommends that the Union's proposed agency shop provision be adopted by the parties.

Arbitration

I. Position of the Parties

Although the parties have agreed to include a final and binding arbitration provision as the terminal step of the grievance procedure, they are in dispute as to which matters are to be excluded from arbitration. They agree that the arbitrator shall have no authority to hear a grievance that involves pupil assignment, staff assignments, staff placement and selection, the budget or budget process, and curriculum. However, the Union does not accede to the Board's wish to also exclude "matters related to Board authority and Board policies, matters related to the provisions of Article VII -- Seniority, and any matter which is subject to a claim in another forum including all matters under the Teachers' Tenure Act." Instead, the Union would prefer to

exclude from the arbitrator's authority "Board matters excluded by Article V":

ARTICLE V - BOARD AUTHORITY

Section A

The Union recognizes that except as specifically limited or abrogated by the terms and provisions of this agreement and to the extent authorized by law, all rights to manage and direct operations and activities of the School District and supervise the administrators are vested solely and exclusively in the Board.

Also, the Union does not wish to exclude matters related to seniority. Moreover, with respect to the Teachers' Tenure Act, the Union's proposal would grant a choice of forums to the employee:

It is also understood that an employee must choose between arbitration or the appeal procedure under the Michigan Teacher Tenure Act for any claim subject to both jurisdictions. Notwithstanding the above, if an employee still pursues an appeal under the Teacher Tenure Act after processing the same claim through arbitration, he/she must reimburse the employer for all expenses incurred by the Employer in said arbitration. The Union agrees it will not process a grievance through arbitration if it is aware the employee has initiated an appeal of the same claim under the Teacher Tenure Act procedure, unless and until this appeal is withdrawn.

II. Discussion and Recommendation

It is the thrust of the Board's position that it is not obligated nor does it wish to have matters related to Board authority and Board policy be subject to a decision by an outside third party. This is especially so regarding issues of layoff, recall, and seniority. Also, where a remedy at law is available to an aggrieved employee, the Board is concerned that it could be forced to defend its action in two forums if the dispute could also be taken to arbitration. However, the Board's

proposed exclusions from arbitration are so broad as to effectively defeat the purpose of a final and binding arbitration clause. Matters "related to Board authority and Board policies" together with matters "subject to a claim in another forum" and issues of layoff, recall and seniority, all added to the exclusions already agreed to by the parties, could arguably encompass such a wide range of issues that only a very limited range of disputes would be subject to arbitration. The purpose of a grievance procedure culminating in final and binding arbitration is to provide a mechanism for a speedy and inexpensive resolution of disputes regarding the application and interpretation of the collective bargaining agreement. By excluding so many issues from arbitration, particularly such critical issues as the application of seniority to layoff and recall, in effect the final decision on how to apply much of the contract is left in the hands of the Board, unless the aggrieved party is willing to undertake lengthy and expensive court action.

It is well-settled public policy to encourage the use of arbitration to resolve differences between employer and employees and it is widely and successfully utilized in both the private and the public sector. In fact, the Board has agreed to final and binding arbitration contract provisions containing few limitations with its teachers and other bargaining units. Moreover, binding arbitration clauses are not uncommon in collective agreements between other school districts and their administrators' bargaining units. The Board's own survey showed 21 of the 42 districts surveyed had such a provision (Bd. Exh. A, pg 32-3).

The matters excluded from the arbitrator's jurisdiction vary widely in number and kind, but presumably all function to the satisfaction of the parties. The Union's proposal, which excludes from arbitration all matters pertaining to Board authority as set forth in Article V, and which protects the Board against the expense of defending a claim both in arbitration and under the Teacher Tenure Act, adequately addresses the Board's legitimate concern while preserving for Union members a mechanism for protecting their vital rights under the contract.

The Fact Finder recommends adoption of the Union's proposal.

Summary of Recommendations

1. Salary:

- a) A job classification and salary grade schedule and an incremental step system shall be adopted, the details of which to be negotiated by the parties.
- b) For 1980-81, a 10 percent across-the-board increase plus placement on the next-highest salary step.
- c) For 1981-82, an 8 percent across-the-board increase plus advancement of one salary step with a 2 percent increase for those at the maximum.
- d) Advancement on the salary steps shall be automatic.

2. Reduction in Force and Seniority

- a) When a classification must be reduced, the employee with the least seniority will be laid off.
- b) An employee, when laid off, may exercise his/her seniority to replace a less senior employee in another

classification provided that the laid-off employee has performed that position during his/her employment with the Kalamazoo Public Schools.

- c) The practice of placing laid-off administrators in teaching positions will be continued, subject to the outcome of the grievance by the Kalamazoo Education Association challenging such practice.
- d) Excluded administrators who are removed or whose position is eliminated shall have the right to be placed in a bargaining unit position, provided that the bargaining unit members can continue to be placed in teaching positions.
- e) The Board's proposed language on affirmative action shall be adopted as follows:

The parties are committed to the goals and principles of affirmative action as established by state and federal statutes, regulations and guidelines; as established by the federal courts; and as established by the Board of Education (Policy 4120). It is understood by the parties to this Agreement that such goals and principles shall be considered in the decision-making process effected by this Article in that such goals and principles may be a determining factor in individual decisions made pursuant to such Article.

- f) Transfers and promotions shall be based on ability, experience, past performance and seniority. When the combination of these factors is equal, seniority shall be the deciding factor.
- g) An employee in the bargaining unit on the active rolls at the date of the Union's certification, May 9, 1980, shall have seniority dating from date of hire into the School District.

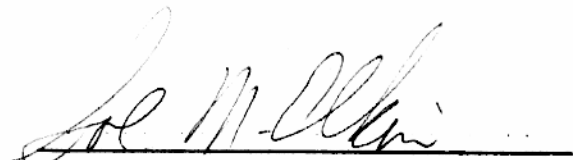
3. Agency Shop

The Union's proposed provision shall be adopted, in which in lieu of payment of a membership or service fee,

any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations may elect to pay sums equal to the Union's dues and initiation fees to a non-religious, nonlabor organization charitable fund exempt from taxation under section 501 (c) (3) of Title 26 of the Internal Revenue Code, chosen from a list of three such funds designated in Appendix A of the Contract...

4. Arbitration

The Union's proposal, which does not exclude from arbitration matters of layoff, recall, and seniority, and which permits a choice of forums for claims subject to the Teachers Tenure Act, shall be adopted.


Sol M. Elkin,
Fact Finder

June 9, 1981