

7/5/78

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1341

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING BETWEEN:

LAMPHERE SCHOOLS (Custodial and Maintenance)

and

AFSCME, Local 1434, AFLCIO, Council 23

CASE NO. 077 E 1394

Dawson, Lewis

BACKGROUND INFORMATION

Michigan State University

Pursuant to Section 25 of L.M.A. an application for fact finding in the above named matter was filed December 14, 1977 for the Lamphere Schools by the authorized agent of the applicant, Frank A. Agnello, Assistant Superintendent of Lamphere Schools.

Lamphere Schools

The Employment Relation Commission accordingly on January 11, 1978 appointed the undersigned as its Hearing Officer and Agent to conduct a fact-finding hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's Regulations.

Following receipt of the notice of appointment, a hearing on the matter was duly held June 14, 1978 in the Administration Center of the Lamphere School, 31201 Dorchester, Madison Heights, Michigan.

Present at the meeting were:

For the Lamphere Schools:

Frank A. Agnello, Superintendent

Robert J. Jenkins, Assistant Superintendent

Virginia Lamberg, Administrative Director for Personnel

Ronald D. Keen, Supervisor, B. G. & T.

Richard E. Kroopnick, Attorney, Lamphere Board of Education

For AFSCME:

Gaylen C. McDonald, Staff Representative

M. R. Smolk, Executive Board

Stanley Lichajewski, Executive Board

Allen W. Barringer, Executive Board

Lloyd L. Little

James J. Guararo

The impasse before the fact-finder concerns a bargaining unit of 58 custodial and maintenance employees of the Lamphere School District represented for purposes of collective bargaining by Local #1434 and Council # 25, A.F.S.C.M.E. These employees work at the various school facilities of the District.

Negotiations for a new agreement commenced June 10, 1977. A tentative agreement was reached April 6, 1978, which included, in addition to all other matters agreed upon, the following:

Vacation allowances for employees with 20 or more years of service be increased from 20 days to 21 days per year effective 7/1/79.

10¢ per hour applied to basic rates in effect effective 7/1/77.

6% increase applied to basic rates in effect effective 7/1/78.

6% increase applied to basic rates in effect effective 7/1/79.

The tentative agreement was submitted to the membership and rejected by them.

The Union then submitted the following increased demands:

Vacation allowances for employees with 10 or more years of service be increased from 15 days to 16 days vacation per year.

20¢ per hour applied to basic rates in effect effective 7/1/77.

8% increase applied to basic rates in effect effective 7/1/78.

8% increase applied to basic rates in effect effective 7/1/79.

Snow removal, when performed on an overtime basis, be assigned exclusively to maintenance employees.

The Board rejected this proposal and requested fact-finding on the issues in dispute.

STATEMENT OF FINDINGS OF FACT AND CONCLUSION
UPON ALL MATERIAL ISSUES PRESENTED AT THE HEARING

The parties are in agreement as to the issues in dispute before the Fact Finder and so stipulated. The issues are:

1. Wages

The amount of increase applicable to the classifications of jobs included in the bargaining unit in each year of proposed three-year agreement.

2. Vacation Allowance

The amount of vacation allowance for employees with ten (10) or more years of seniority.

3. Work Assignment

The assignment of snow removal to a newly established classification of "Groundsman".

ON THE MATTER OF WAGES AND COST OF LIVING COMPUTATION:

AFSCME'S POSITION IS:

Effective July 1, 1977 the basic hourly rates shown in the wage schedule, after inclusion of the C.O.L. amount, be increased in the amount of twenty cents (20¢) per hour.

Effective July 1, 1978 the current basic hourly rates shown in the wage schedule be increased by eight percent (8%).

Effective July 1, 1979 the current basic hourly rates shown in the wage schedule be increased by eight per cent (8%).

LAMPHERE SCHOOL BOARD'S POSITION IS:

Effective July 1, 1977 the basic hourly rates shown in the wage schedule, after inclusion of the C.O.L. amount, be increased in the amount of ten cents (10¢) per hour.

Effective July 1, 1978 the current basic hourly rates shown in the wage schedule be increased by six percent (6%).

Effective July 1, 1979 the current basic hourly rates shown in the wage schedule be increased by six percent (6%).

ON THE MATTER OF VACATION ALLOWANCES:

AFSCME'S POSITION IS:

The current vacation allowances for employees with ten (10) or more years of seniority be increased from fifteen (15) days to

sixteen (16) days, effective July 1, 1979.

THE LAMPHERE SCHOOL'S POSITION IS:

The current vacation allowance for employees with twenty (20) or more years of seniority be increased from twenty (20) days to twenty-one (21) days, effective July 1, 1979.

ON THE MATTER OF WORK ASSIGNMENT (SPECIFICALLY SNOW REMOVAL):

AFSCME'S POSITION IS:

Snow removal, when overtime is required, be assigned exclusively to Maintenance classifications and not to the newly established classification of "Groundsman".

LAMPHERE SCHOOL BOARD'S POSITION IS:

The assignment of work is expressly reserved to Management in accordance with the provisions of the agreement and, therefore, there should not be any work (including snow removal) assigned exclusively to any one classification.

RELATIVE TO THE ISSUES IN DISPUTE THE PARTIES PRESENTED THE FOLLOWING:

The Lamphere School Board's statement relative to the matter of wages is that the wage rates offered for the job classifications in the bargaining unit in each year of the agreement will fairly and equitably compensate the employees in the bargaining unit for the work performed in view of the fact that, in addition to the adjustments to the base rates of pay, C.O.L. adjustments are added semi-annually. The C.O.L. adjustments during 1976 have amounted to the maximum of eight cents (8¢) per hour, each six months for a total of sixteen cents (16¢) per year; and in view of the continuing inflation of the economy there is every reason to believe that the eight cent (8¢) per hour increase will continue to be applied each six months of the proposed three years of the contract term.

Further, the Lamphere School Board has now assumed the payment of the employee's contribution to the retirement fund; 5% of an employee's gross wage, which was deducted from each employee's wages. The assumption of this amount in the Board's view represents a 5% increase in wages inasmuch as each employee has the equivalent amount of money now available that was formerly deducted from his pay and, thus, is a substantial increase in wages received.

The Board further argues in support of the offered increases in the wage rates that the application of these increases will place the Lamphere School District well above the average of 28 school districts in Oakland County. In support of their position the Board submitted wage comparisons for the year 1977-78 of 28 school districts; the comparisons are of four major job classifications included in the bargaining unit: Custodians, Elementary Head Custodians, Secondary Head Custodians, Maintenance (skilled worker). These classifications are common to the 28 districts surveyed.

The rate of pay offered for Custodians would place the Lamphere School District in the third highest position among the 28 districts; and the rate offered of \$5.68/hour is well above the average rate paid for this classification by the comparable districts of \$5.30/hour.

The rate for the classification of Elementary Head Custodian would be \$5.91/hour, a rate which would rank the district seventh among the 28 districts; and this rate is well above the average of \$5.66/hour paid for this classification of work by the 28 districts.

The classification of Secondary Head Custodian would receive a rate of \$6.13/hour which would rank the district eighth among the 28 school districts and above the average of \$5.91/hour paid by the 28 districts.

The classification of Maintenance (skilled worker) would receive \$6.42/hour which would place the district fourth among the 28 districts and which would be well above the average of \$5.93/hour paid by the 28 districts.

The Board further contends that the 6% adjustment to the base rates in each of the succeeding two years of the agreement, coupled with the C.O.L. adjustments which will accrue will keep the wage rates well above the average of the districts surveyed.

AFSCME's position is that the increases offered are just not enough. They are asking for the additional increases because the wage rates offered will not bring the employees take-home pay up to where there is sufficient money for their needs. They further state that the inflationary spiral in the cost of essential items such as food, medical care and fuel leaves little or no money available for non-essential items.

They further point out that taxes are not taken into consideration in the computation of C.O.L. and the increases in taxes paid have further eroded these employees' income.

The Union admits the increased rates of pay offered by the district compare very favorably with rates paid by other school districts in Oakland County; but they believe the employees in the bargaining unit are entitled to even higher pay because of the high cost of living in the area.

In the matter of vacations, the Board argues that the offer of one (1) additional day of vacation for employees with twenty or more years service is more than fair. They submitted comparisons of vacation allowances of 28 school districts in Oakland County. The comparisons show that only three districts grant more than 20 days vacation after 20 years of service. It was also pointed out that to agree with the Union's request that the one day additional vacation be granted to those employees with ten years or more of seniority would place the district well above the average vacation allowance of 28 districts.

On the matter of vacations, the Union's stand is that the employees in the bargaining unit have not had any increase in vacation allowance for a long period of time and; therefore, they are justified in requesting the additional one day's vacation allowance be granted employees with ten or more years rather than only employees with 20 or more years of service.

On the matter of work assignments, it is clear that the basic issue is the overtime worked by employees of the Maintenance Department in the removal of snow during the winter months. The issue raised is not whether one classification of work should be assigned snow removal exclusively, but which group of employees would be eligible for any overtime that occurs because of the need to remove snow accumulations. (Because of the nature of the work much of this work is done on an overtime basis).

The Board's position is that the contract gives them the sole right to determine how work shall be performed and the assignment of such work. They cite the contract - Article VI, Board Rights, which states: "It is expressly agreed that all rights which

ordinarily vest in and have been exercised by the Board of Education, except those which are clearly and expressly abridged by any provision of this Agreement, shall continue to vest exclusively in and be exercised exclusively by the Board without prior negotiations with the Union, either as to the taking of action under such rights or with respect to the consequence of such action, during the term of this Agreement. Such rights shall include, by way of illustration and not by way of limitation, the right to:

- A. The management, direction and control of the school's business operations, equipment and facilities in order to maintain an efficient and orderly school district.
- B. The right to assign and direct work; the right to hire, promote, transfer, suspend, discipline for just cause, determine the number of shifts and hours of work and scheduling of all the foregoing, and the right to establish, modify or change any work or business hours or days."

They also cite the provisions pertaining to the establishment of classifications of jobs: Article XIII, Section 9: "New jobs in the bargaining unit may be created by the school administration. The Union will be notified upon the creation of a new job and the parties shall meet at the Union's request to negotiate wage rates for the particular job and to establish the rate at an appropriate plane in the wage structure".

They pointed out that this procedure was followed during the negotiations when they discussed the job description for "Groundsman" with the Union and a rate for the classification was tentatively agreed upon. The Board stated that the Union did not raise the question of snow removal at any time during these discussions; therefore, to now argue that this work should not be assigned to employees in the above-named classifications was an invasion of management's rights. The Board's position is that the work will not be assigned exclusively to any one classification but that it is the right of management to determine when and by whom the work will be performed either during regular hours or on overtime; and to agree with the Union's present position would materially change the management's rights clause and the clause pertaining to the establishment of new classifications.

The Union's position is that during the discussions regarding the classification of "Groundsman" and the assignment of work to this classification, there was no mention made by the Board that snow removal would be assigned to employees in this classification. They submitted an exhibit (attached) entitled "Board Proposal for September 14, 1977" in which job descriptions in three classifications of work were included. These classifications were:

1. System Wide Roofer
2. System Wide Ground Maintenance
3. System Wide Painters.

The description pertaining to "Groundsman" defines the area of responsibility, but nowhere in the description was any reference made to snow removal.

The Union admits that duties of job classifications are not negotiable; however, they contend that in order to effectively bargain on wage rates it is necessary for the Union to know the type of work included in a given classification. The Board's failure to mention snow removal or include it in the written description did not enable them to effectively negotiate the rate for the job. When they found out that snow removal would be assigned to employees in the classification of "Groundsman" they raised the issue on the basis that to assign this type of work to employees in this classification would reduce the earnings of employees in the "Maintenance" classification who had yearly performed this work on an overtime basis exclusively in the past. They argue this work has produced for the "Maintenance" employees an average of from \$1,200 to \$1,500 additional pay per year and to take it from them by re-assigning the disputed work when overtime was necessary was a violation of past practices and a violation of the Union's right to negotiate wages.

CONCLUSIONS AND RECOMMENDATIONS

The data submitted to the Fact Finder has been carefully studied and the relative position of the parties examined in detail. Based on the evidence presented and the data available the following recommendations are submitted for the parties' consideration:

1. Wages

It is recommended the Board's offer be accepted. The fact that the proposed increases clearly will place the Lamphere School District well above the average of wages paid for similar classifications of work by the 28 districts cited persuades this Fact Finder that the amount of increases requested by the Union cannot be supported.

In reviewing the disputes over wages and benefits in public service jobs such as these, the Michigan Employment Relations Commission has consistently taken the position that consideration must be given to the relative position of wages and benefits granted by a given school district when compared to wages and benefits granted by comparable school districts and that such wages and benefits should be fair and equitable. In the given situation the increases in the basic wage rates offered by the Board are fair and equitable.

The Union's position that because of inflation the employees in the bargaining unit are entitled to special consideration is not persuasive. Every wage earner is being adversely affected by the continuing inflation that is eroding people's purchasing power. It is most unfortunate that inflation continues; but the employees in this bargaining unit are not being more adversely affected than employees elsewhere. Therefore, it must be accepted that the wages being offered, when compared to wages for similar work paid by the other school districts, are fair and equitable.

2. Vacation Allowances

The additional day of vacation for employees with 20 or more years of seniority is well above average and in line with the allowances available to employees of the other school districts surveyed. There does not seem to be any justification for increasing the allowance for employees with ten or more years of seniority as requested by the Union. It is recommended that the Union accept the Board's offer.

3. Snow Removal Work

The Fact Finder cannot agree with the Union that this work should be assigned exclusively to the classification of "Maintenance"

when overtime is required. To do so would be a violation of the management's rights and the provision pertaining to the establishment of new or changed classifications: contract provisions the Union has agreed to and has not attempted to change. The Fact Finder would be remiss in making a recommendation that, if accepted, would erode management's right to assign work. The Board is correct when they state that the assignment of work and the establishment of job classifications is their responsibility; and they have not bargained away their right to establish new jobs and to determine how work shall be done. It is understandable that the Union would be concerned when the job description submitted by the Board did not include "snow removal".

In reviewing the exhibit attached, the Fact Finder is sympathetic to the Union's position when you consider the statement:

"It is understood that the above job description will not be written into the contract but shall be on file with the Board and the Union as to the intent of these jobs in posting by the Board."

Certainly, this statement is somewhat ambiguous and, in effect, restrictive when you consider the words, "as to the intent of these jobs".

There was no indication there was deliberate evasion on the part of the Board in not including "snow removal" in the job description; however, it is understandable the concern of the Union when you consider the effect on annual earnings of the Maintenance employees who have generally performed such work on overtime.

There is one suggestion the Fact Finder would make: since the basic issue is the overtime or potential overtime that may occur in the removal of snow, and considering the fact that overtime is voluntary in accordance with the provisions of the agreement, and the contract states that authorized overtime assignments shall be divided as evenly as possible, it is recommended that the parties consider establishing a practice of limiting snow removal overtime assignments to "Maintenance" and "Groundsman" employees and a snow removal overtime list be established which would include only employees in these classifications. Snow removal overtime could then be rotated among the eligible employees. This seems to be a

fair and equitable way to resolve the problem. It should be recognized if the "Maintenance" employees were granted the exclusive right to overtime for snow removal purposes employees classified as "Groundsman" would have a grievance inasmuch as it was admitted by both parties that such employees could and would be assigned snow removal duties during regular hours. If such is the case, they should be entitled to share any over-time that may occur in the performance of this work.

IN SUMMARY THE RECOMMENDATIONS ARE:

1. Union accept the wage increases offered by the Board.
2. The proposed increase in vacation allowances of one day additional vacation for employees with 20 or more years of service by accepted by the Union.
3. The overtime assignments pertaining to snow removal duties include employees in both the "Maintenance" and "Groundsman" classifications and be divided as equitably as possible among such employees.

The above recommendations are made in the hope that they will provide a basis for agreement for a new master contract that will prove beneficial for both parties.

Respectfully submitted,

Dawson J. Lewis
Hearing Officer and Agent
8127 Colony
Grosse Ile, Michigan, 48138
961-1686

Attached: Board Exhibit No. 2 - Tentative Agreement dated 4/6/78
Union Exhibit No. 2 - Board Proposal

DJL:ec
7/5/78

Temple Schools 12434

#18 last offer

4/6/78

Package Proposal

Unions #17 plus change the following

Unresolved issues.

Vacation 7/1/79 30 yrs receive 21 days vacation
effective in the 79-80 year.

7/1/77-78 10 cents on rates

7/1/78-79 6% on rates

7/1/79-80 6% on rates

COLA 8/1/77 8 cents 1/1/79 8 cents

1/1/78 8 cents 7/1/79 8 cents

7/1/78 8 cents 1/1/80 8 cents

request COLA usage of CPI index

Grievances Warehouse 7:30 AM start

Painting \$100X per 4 maintenance men
(union rejects Board's last answer on grievances
and will settle on the above)

Accepted
at 2:07 PM
on behalf of the Union
Board
Robert J. [Signature]
4/6/78 2:07 PM

*Based
sub 2*

Section 9: The following hourly rate schedule shall be retroactive to July 1, 1977, and shall be in effect through June 30, 1978.

<u>Step</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>	<u>Class V</u>	<u>Class VI</u>
0	\$4.47					
60 days	\$4.75					
1	\$5.02					
2	\$5.22					
3	\$5.58	\$5.67	\$5.75	\$5.79	\$6.01	\$6.30

The above hourly rate schedule shall be adjusted by a cost of living hourly rate increase or decrease as provided for in Section 12 of this Article.

Section 10: The following hourly rate schedule will be in effect from July 1, 1978, through June 30, 1979.

<u>Step</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>	<u>Class V</u>	<u>Class VI</u>
0	\$4.74					
60 days	\$5.04					
1	\$5.32					
2	\$5.53					
3	\$5.91	\$6.01	\$6.10	\$6.14	\$6.37	\$6.68

The above hourly rate schedule shall be adjusted by a cost of living hourly rate increase or decrease as provided for in Section 12 of this Article.

Section 11: The following hourly rate schedule will be in effect from July 1, 1979, through June 30, 1980.

<u>Step</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>	<u>Class V</u>	<u>Class VI</u>
0	\$5.02					
60 days	\$5.34					
1	\$5.64					
2	\$5.86					
3	\$6.26	\$6.37	\$6.47	\$6.51	\$6.75	\$7.08

The above hourly rate schedule shall be adjusted by a cost of living hourly rate increase or decrease as provided for in Section 12 of this Article.

Union
Exh 2

BOARD PROPOSAL FOR SEPTEMBER 14, 1977

The Board makes this proposal in the interests of moving negotiations. We sincerely hope that the Union recognizes the significant move made by the Board and will consider a Union move which will lead to an early settlement:

PROPOSAL NO. 1:

Acceptance of job descriptions for (1) System-wide roofer, (2) System-wide grounds maintenance and (3) System-wide painters. These descriptions are as follows and do incorporate the counterproposals made by the Union at the last meeting.

1. System-wide Roofer:

Shift Assignment:

- A. Two (2) system-wide roofing positions to work on the day shift year round.
- B. One (1) system-wide roofing position to work on the day shift from April 15th thru November 15th and the afternoon shift November 16th thru April 14th.

Area of Responsibility:

Perform work related to roof repairs for laminated, build-up roofs, flashing gravel stops, expansion joints, vents, tacks, cuts, breaks and blisters.

Qualifications:

Physically fit - without fear of heights.

Duties in the Event of Inclement Weather:

Class I custodian functions will be assigned.

Rate of Pay:

Class III.

2. System-wide Grounds Maintenance:

Shift Assignment:

Two (2) lawn and ground maintenance/sub system-wide positions. Day shift from April 15th through October 15th and afternoon shift October 16th thru April 14th.

Area of Responsibility:

Grounds care of all buildings. This includes but not limited to cutting or cleaning of lawns, shrubs, flower beds, driveways, sidewalks, curbs, seeding, fertilizing, watering and preparing athletic fields.

Qualifications:

General knowledge of lawn maintenance and operation of power driven equipment. Must have state vehicle operators license.

Duties in the Event of Inclement Weather:

Class I custodial functions will be assigned.

October 16th thru April 14th: (Afternoon Shift)

Class I custodial functions will be assigned.

Rate of Pay:

Class III.

3. System-wide Painters:

Shift Assignment:

Four (4) system-wide painter positions to work on the day shift from June 13th thru September 6th and the afternoon shift September 7th thru June 12th.

Area of Responsibility:

Paint classroom walls, halls, ceilings, doors, frame and related parts of the building, using brushes, rollers and airless spray equipment.

Qualifications:

Individuals should have working knowledge of paints and thinners and use of spray equipment.

Have no allergies to paints and thinners.

Rate of Pay:

Class III

It is understood that the above job descriptions will not be written into the contract but shall be on file with the Board and Union as to intent of these jobs and posting by the Board.

The job classifications shall be identified as follows:

A. Class I:

1. School custodian
2. Utility custodian

B. Class II:

1. Secondary night leader
2. Pool operator
3. Warehouseman

C. Class III:

1. System-wide painter
2. System-wide electrician
3. System-wide plumbing
4. System-wide roofers
5. System-wide groundsmen
6. Other system-wide duties

D. Class IV:

1. Secondary second day man
2. Elementary day man in charge

E. Class V:

1. Secondary day man in charge

F. Class VI:

1. Maintenance

Section 9: The following rate schedule shall be in effect from the date of ratification to June 30, 1977.

<u>Step</u>	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>	<u>Class IV</u>	<u>Class V</u>	<u>Class VI</u>
0	\$4.37					
60 days	\$4.65					
1	\$4.92					
2	\$5.12					
3	\$5.48	\$5.57	\$5.65	\$5.69	\$5.91	\$6.20

The above rate schedule includes the addition of cost of living increases from the present contract and reflects our movement from our original proposal. Also, the employees are realizing a 5% plus increase because of our contribution to the retirement fund.

The Board is still requesting a three-year contract and will consider a proposal for the second and third years.

ARTICLE XII:

Section 8: In consideration of your acceptance of the above, the Board proposes that we eliminate Section 8 entirely.