

8/31/87 FF

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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding )

between )

Lincoln Consolidated Schools )

and )

Lincoln School )  
Transportation Employees )

Michigan Employment  
Relations Commission

Case No. D85 G-1927

REPORT OF THE FACT FINDER  
RAYMOND J. BURATTO

REPRESENTING THE PARTIES

For the Lincoln Consolidated Schools

Rita E. Thomas, Attorney

Kenneth Dyer, Assistant Superintendent  
of Schools

James Nowling, Transportation  
Manager

Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

For the Lincoln School Transportation Employees

Richard A. Gray, Michigan Education Association  
UniServ Director

Judith Norris, President  
Lincoln School Transportation  
Employees Association

Lottie Ganger

Elsie Grams

Vanessa Jones

Vi Midura

Bobbie Schultz

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Lincoln Consolidated Schools (FF)

Also attending on behalf of the District were Dr. Donald Chalker, and Messrs. William Borgstadt, and David Dejanovich.

#### CHRONOLOGY PRIOR TO THE FACT FINDING

On February 27, 1987, the Lincoln Consolidated Schools and the Lincoln School Transportation Employees Association (LSTEA) jointly filed a Petition for Fact Finding for a unit of thirty-three (33) full and part-time bus drivers and mechanics.

On April 7, 1987, the Michigan Employment Relations Commission notified the parties and appointed Raymond J. Buratto, Esq., as its Fact Finder to conduct a fact finding hearing pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commission's Regulations, and to issue a report on the matters unresolved between the parties.

#### ACTIVITIES SUBSEQUENT TO THE APPOINTMENT OF THE FACT FINDER

In telephone conversations subsequent to the notification and appointment, the parties arrived at a mutually convenient date of May 27, 1987, for the commencement of the hearing. However, due to scheduling conflicts which arose later, it was agreed that the hearing would commence Thursday, June 18, 1987, at the offices of the Lincoln Schools. Additional days of hearing were held on June 26 and June 29, 1987, at the same location.

The collective bargaining relationship between the parties is of limited duration, the first agreement being negotiated in 1977. Each contract prior to this fact finding has been of two years duration. The provisions of the 1985-86 contract were implemented by the employer, without fact finding, following the unit's rejection of a final offer.

Two items originally included in the Petition for Fact Finding were resolved by the parties. Article XXX "Route Selection", was withdrawn from the Petition on June 26, 1987, and Article XXXIII "Student/Driver Conduct", was resolved prior to the beginning of the hearings.

The remaining items were presented by the parties for the Fact Finder.

#### Article VIII, "Compensation", Section B.3.

##### Emergency Pay

The current emergency pay provision is found in Article VIII, Section B.3., of the agreement:

Any employee called in from home reporting for emergency duty, at the Employer's request, not scheduled in advance, shall be guaranteed three (3) runs pay.

Testimony indicates that the above provision has been part of the agreement since the 1979-81 contract. (Association Exhibit 9). The record further indicates that the Board wishes to adopt the following language:

Any regular employee called in from home for emergency duty, at the employer's request, not scheduled in advance, shall be guaranteed one and one-half ( $1\frac{1}{2}$ ) times the regular pay per run.

#### FINDINGS OF FACT

The uncontroverted record testimony establishes that the current provision has been in effect since the 1979-81 agreement. Of the fifteen (15) districts presented in the Emergency Pay Comparisons of pages 22-23 of the Board's exhibit, only Lincoln, Ypsilanti, Dexter and Willow Run pay more than straight time for emergency pay. The most generous, Ypsilanti, pays the equivalent of four hours in each emergency situation. It is significant to note that eight of the districts surveyed do not provide for emergency pay. No distinctions are made by other districts for "regular" employees.

#### RECOMMENDATION

Upon the record as a whole and the above findings of fact, it is recommended that:

1. The Board's reference to "regular" employees be rejected.
2. The rate of compensation be reduced from three (3) runs pay to one and one-half ( $1\frac{1}{2}$ ) runs pay.

#### Article VIII, "Compensation", Section C.1. & 2.

##### Cleaning of Buses

Article VIII, Section C.2. of the current agreement provides

Drivers are not required to clean the inside of their buses. If they so choose, they will be allowed one-third ( $1/3$ ) run pay, per week, per driver.

The Association has proposed retention of the existing language while the Board proposal includes this language:

Drivers are not required to clean the inside of their buses.

In support of its position, the Association submitted Exhibits 10 and 11. Exhibit 10 outlines the parties' positions through fact finding. Exhibit 11 details the evolution of this provision in bargaining five contracts dating back to 1977-78 when no provision was made for drivers who chose to

clean the interiors of their buses. Exhibit 11 establishes that the current language was agreed to by the parties in their 1978-79 negotiations. No changes in the provision have been agreed to since that time.

Testimony presented by the Ms. Thomas would indicate that the bus cleaning by the drivers is a duplicative effort. Page 27 of the Board's exhibit confirms its bargaining posture that drivers are not required to clean their buses. Counsel for the Board stated that at least two members of this bargaining unit are paid Five Dollars (\$5.00) per hour to perform the very work for which the drivers are requesting pay. The record establishes that the cost to the Board for having the work done by the drivers is approximately Six Hundred Dollars (\$600.00) per year.

#### FINDINGS OF FACT

Since the collectively bargained agreement of 1978-79, the bus drivers in this unit have received payment for cleaning the interior of their buses, if, at the driver's option, the bus is cleaned. The Board pays other members of this unit an hourly rate to perform this function and has no way to verify whether the drivers have cleaned the interiors.

Pages 28-29 of the Board's exhibit are a comparison of similar provisions in neighboring districts. The exhibit establishes a variety of practices in other districts, ranging from no provision in Ypsilanti, another MESPA unit, to the payment of an additional "one-half ( $\frac{1}{2}$ ) hour clock time" per day in Ann Arbor (Teamsters), thirty (30) minutes per day in Brighton, (IUOE), to language in the Milan (non-affiliated) contract which does not require drivers to sweep their buses. Most of the provisions cited which compensate the driver for sweeping the bus interior do so as part of compensation for a variety of so-called pre- or post-trip functions, such as gassing, performing a safety inspection, or cleaning windows.

#### RECOMMENDATION

Upon the record as a whole and the above findings of fact, it is recommended that:

1. The Board's proposed language "Drivers are not required to clean the inside of their buses" be adopted.
2. The work of cleaning the interior of the buses be offered to the bargaining unit in seniority order, to be compensated at the currently existing rate of Five Dollars (\$5.00) per hour.

#### Article VIII, "Compensation", Section D.

##### Holidays

Pursuant to Article VIII, Section D.2. of the agreement, drivers receive seven paid holidays, while mechanics receive twelve (12) days. The Association proposes a retention of the existing language while the Board

proposes the elimination of Easter Monday and one of the two days before New Years Day.

#### FINDINGS OF FACT

The parties submitted extensive exhibits regarding paid holidays. Pages 32 & 33 of the Board's exhibit is a comparison of paid holiday provisions in neighboring districts. Exhibits 12 through 16 submitted by the Association represent the positions of the parties (Ex. 12 & 13); a comparison of paid holidays in LSTEA contracts since 1977-78 (Ex.14); paid holidays in the LEAO contract (Ex.15); and a comparison of holidays paid to school transportation employees in Washtenaw County (Ex.16).

Of the ten districts represented in Association Exhibit 16, five pay one day before New Years as a holiday; no district pays two days. There are five districts which either have no provision for the holidays in question, or do not pay at least one day before New Years.

Eight of the districts surveyed do not recognize Easter Monday within their holiday provisions, and four others, Pickney, Hartland, Brighton and Manchester, have no holiday provision at all. Thus, twelve districts do not recognize Easter Monday as a paid holiday. Only Lincoln and Van Buren do.

Both the bus drivers and mechanics of this district compared favorably to their counterparts in neighboring districts. Only Saline affords its twelve month employees more than twelve holidays. Ypsilanti, Willow Run, and Lincoln all pay twelve holidays. The remaining eight districts which pay holidays range from five to ten.

Although the testimony is not clear, the surveys would indicate that the seven holidays paid the Lincoln drivers rank fifth among nine districts which provide holidays to less than full time (52 week) employees. Association Exhibit 15, and the record testimony, illustrate that the Lincoln Education Associates Organization members' 1985-88 contract reduced holidays for less than twelve month employees from twelve to eleven, and for twelve month employees from thirteen to twelve. Food service employees continue to receive seven paid holidays.

Neither party presented evidence relating to the cost of these holidays, nor the savings to be enjoyed through their elimination.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that:

The employer's proposal to delete Easter Monday, and change "two days before New Years" to "one day before New Years" be rejected. Although the number of paid holidays received by twelve month employees ranks second in the county, and the less than twelve month employees rank fifth among nine

districts, absent a convincing economic rational from the Board, I find no justification to recommend a reduction in the total number of holidays paid.

The LEAO members accepted, through collective bargaining, a reduction of one holiday. At this writing, the twelve month LEAO member receives twelve holidays, as does the twelve month member of the LSTEA/MEA. In this regard, I believe that the interests of parity must look to the LSTEA, and therefore I recommend retention of the current language.

Article VIII, "Compensation", Sections E.1. & 2.

Resignation or Retirement

At fact finding, the Board stated it seeks to convert severance pay into retirement pay by substantially increasing the length of service required before pay out of a percentage of unused sick leave. The Board's proposal reads:

- E.1.           Upon retirement of the employee, beginning with the 60th month of service, the Employer shall pay twenty-five percent (25%) of all unused sick leave, computed according to the pay rate at the time of retirement.
  
- 2.             Upon retirement of the employee, who has completed one hundred twenty (120) months of service, the Employer shall pay fifty percent (50%) of all unused sick leave computed according to the pay rate at the time of retirement.

The Association wishes to retain the current language of Article VIII, Section E.1. & 2.:

Upon resignation or retirement of the employee, beginning with the 25th month of service, the Employer shall pay twenty-five (25) percent of all unused sick leave, computed according to the pay rate at the time of retirement.

Each party submitted testimony and exhibits attempting to justify their respective positions. Pages 34 (a)(1) and (2) of the Board's exhibit show a current severance pay liability of \$30,714.50 to employees with at least ten (10) years of service, and \$8,047.48 to employees with at least two, but not more than nine years, of service. In keeping with its theme of producing equity or parity through this fact finding, the Board did not argue an inability to pay, but rather, that the liability for severance is excessive when compared to the other Lincoln bargaining units, or to transportation employees in surrounding districts.

In rejecting the Board's proposed language changes, the Association maintains that the change from severance to retirement pay, and the increase of required length of service from twenty-five (25) to sixty (60) months, is simply unreasonable.

#### FINDINGS OF FACT

Pages 35-36 of the Board's exhibit is a comparison of resignation or retirement provisions in the fourteen districts neighboring Lincoln. A review reveals none of them have a provision similar to Lincoln's. Four districts, including two MESPA units, have no provision. At least half of the contracts surveyed require a minimum of ten years service to obtain a retirement benefit, generally based upon a flat rate, or maximum amount, pay out. For example, the Ypsilanti MESPA agreement offers resignation pay of Twenty-Two Dollars (\$22.00) per year after ten years and Thirty-Three Dollars (\$33.00) per year after fifteen years. An additional Two Dollars (\$2.00) per hour is paid upon retirement. A maximum of eighty (80) sick leave days is paid after ten years of service in Pinckney, another MESPA unit. The Ann Arbor drivers, represented by the Teamsters, receive a maximum pay out of one hundred (100) days pay after ten consecutive years of service. Another Teamster unit, Howell, receives a maximum of thirty (30) days paid out.

Neither Van Buren nor Manchester offer resignation pay. In Van Buren, employees with fifteen years of service receive Ten Dollars (\$10.00) per unused sick leave day, up to a maximum of \$550.00, whereas Manchester pays a maximum of \$1,000.00.

Both Milan and Dexter offer a resignation pay after ten (10) years, up to a maximum of Seven Hundred Fifty Dollars (\$750.00), and Fifteen Hundred Dollars (\$1,500.00), respectively.

The current agreement with the Lincoln Education Associates Organization, a MESPA unit, contains the same language as the current LSTE contract. In their most recent negotiations, the Lincoln district teachers agreed upon a retirement only payout of 50% of the total unused sick days beginning with the 1985-86 school year. Days accrued prior to that year are paid out at 75% of the accrued sick days. Teachers do not receive a resignation pay out.

Association Exhibit 18 is a comparison of the severance pay language contained in the last six (6) LEAO contracts since 1977-78. The first agreement stipulated that twenty-five (25) percent of the unused sick leave be paid upon retirement or resignation, beginning with the forty-ninth (49th) month of service. Beginning with the 1978-79 agreement, and continuing through the present, the LEAO language is identical to the current LSTE contract providing for the payment of twenty-five (25) percent of the unused leave upon resignation or retirement, beginning with the twenty-fifth month of service.

Clearly, no other surveyed district pays either a resignation or retirement pay after only two years of service. By the language of the contract,

a Lincoln bus driver with two years service could accrue up to twenty-four (24) unused sick days, of which six (6) would be paid upon severance, either by resignation or retirement. Assuming a rate of \$9.17 per run, the resignation pay pay out to this two year full time driver would be \$220.08, which exceeds the maximum pay out to a ten year Ypsilanti employee and is nearly one-third the maximum pay out to ten year employees in Dexter, and almost half the amount paid to ten year employees in Van Buren.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that:

1. The parties recognize that when compared with other Lincoln bargaining units, and those of surrounding districts, the payment of twenty-five percent of unused sick leave beginning with the twenty-fifth (25th) month of service is excessive. No other district surveyed offers a resignation or retirement pay out after such a short length of service. Although the LEAO unit contract contains the same language as the current LSTE agreement, the teachers receive no resignation and have reduced retirement pay through a "grandfather" clause.
2. For reasons stated above, the Board's proposed language for Article VIII, Section E.2., is fair and reasonable. The majority of districts surveyed which provide for retirement pay after ten years, limit their pay out to a set amount. Even Milan, which will pay 75% of the unused sick leave, limits that amount to \$1,500.00. Assuming a rate of \$9.17 per run, four runs per day, and 120 accrued sick days paid at 75%, the ten year Lincoln employee would receive more than \$3,300.00. Under the Board's proposal of a 50% pay out, this amount becomes \$2,200.80, still \$700.00 more than a similarly situated Milan employee would receive.

#### Article VIII, "Compensation", Section G.

##### Longevity Pay

Substantial revisions to the current contract have been proposed by each party. The Board seeks to provide longevity pay only to full time employees and to increase from 180 months to 240 months the length of service necessary to be eligible for longevity pay of 4% (four percent) per year. The Association proposes that employees be eligible upon sixty (60) months service and receive two (2), four (4), six (6), eight (8) and ten (10) percent at the beginnings of the sixty-first (61st), one hundred twenty-first (121st), one hundred eighty-first (181st), two hundred forty-first (241st), and three hundred and first (301st), months, respectively. The current agreement allows eligibility for all employees, including part time, upon one hundred twenty (120) months of service, with two (2) percent of gross earnings paid per month until the one hundred eighty-first (181st) month, after which four (4) percent is paid.

Exhibits 21 through 24 were submitted by the Association in support of its

position. Exhibit 21 contains the Board's proposals up to the fact finding; its reverse side presents the Association's proposal. Exhibit 22 is a comparison of the longevity pay provisions of the three Lincoln bargaining units, the teachers, the LEAO, and the LSTEAs. Exhibit 23 is a comparison of the longevity pay provision of the LSTEAs agreements since 1977-78. Exhibit 24 is a comparison of the longevity pay provision of the LEAO agreements since 1977-78.

Pages 39 and 40 of the Board's exhibit are a survey of the longevity pay language in surrounding districts. Page 41 is the Board's comparison of longevity pay provisions in its three bargaining units.

#### FINDINGS OF FACT

Eight of the fourteen districts surveyed do not provide longevity pay. With the exception of Manchester, none of the districts which do, specify that it be limited to regular or full time employees. Four of the five districts which provide longevity pay do so after no more than five years of service, and Manchester provides it to employees with as little as two years of service. Of all districts reviewed, only Lincoln utilizes a "percentage of income" system; three districts offer a small additional hourly "stipend", while two districts use an increasing flat rate amount based on the years of service.

The Association opposes the Board's proposal to cover only those employees working at least twenty hours per week to the exclusion of those working less. Page 48.1 of the Board's exhibit indicates that only two of the thirty-three employees will not be covered by the Board's proposal.

The Board supports its position regarding coverage only for those LSTEAs members who work twenty or more hours by comparison to the LEAO contract where only those employees working thirty or more hours are considered "regulars" and are beneficiaries of the longevity pay provisions of the contract.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that:

1. The Board's proposal to extend longevity pay benefits only to those employees with ten years of service, and working a minimum of twenty hours per week, be adopted, with the understanding that the two current employees working less than twenty hours be afforded continued coverage through a "grandfather" clause, at such time as they have fulfilled the years of service requirement.
2. The Board's proposal to pay four (4) percent of gross income beginning at the two hundred fortieth (240th) month of service be rejected. I find it unreasonable, in light of the above recommended adoption of the Board's language regarding years of service and required hours of work, to propose or recommend, an additional one hundred twenty months, or ten years, employment, to qualify for a two (2) percent increase in

longevity pay. Therefore, it is recommended that the status quo of four (4) percent be maintained.

3. At the beginning of the 241st month, through the 300th month of service, six (6) percent of the gross income will be paid, per year.
4. At the beginning of the 301st month of service, and regardless of the length of service thereafter, eight (8) percent of the gross income will be paid, per year.
5. The recommendations are made cognizant of the fact that no increases have been made in the percentage paid since the 1979-81 agreement, which in turn had provided for a one percent increase in the steps negotiated in the 1978-79 Master Agreement.

#### Article VIII, "Compensation", Section J.

##### Eligibility for Insurance Coverage

The current contract provides for fully paid insurance benefits to all employees working at least twenty hours per week. The Association proposes retention of this language.

The Board's proposal contains extensive revisions in the insurance benefits language. If adopted, Section J., would obligate the Board to the payment of full premiums only for those employees working thirty or more hours per week. Pro-rata premiums would be paid for those working at least twenty-one, but less than thirty, hours per week. Employees working at least twenty, but less than twenty-one hours, would be eligible for single person coverage premiums only. All employees hired prior to September 1, 1986, working at least twenty-one, but less than thirty hours would continue to receive fully paid insurance benefits.

Additional proposed revisions would include Board payment of full premiums for MESSA Super Med II, with the MESSA Care Rider, or Blue Cross MVF 2, Plan A. Current language does not include the MESSA Care Rider. Also proposed is the elimination of double coverage, where both spouses belong to the same bargaining unit, or where one spouse is covered by the other's health care insurer.

The Association voiced considerable concern over the impact on the bargaining unit of the employer's proposal. Association Exhibit 27 reveals thirty-one of thirty-three bargaining unit members, irrespective of the hours worked, are eligible for insurance coverage provided through employer-paid premiums of \$4,790.16 per annum per employee. If the Board plan were implemented, sixteen (16) employees working twenty, but less than twenty-one, hours would have their benefits reduced to employee-only coverage, which would cost the employer \$1,628.40 per annum per employee. Fifteen employees working between twenty-one and thirty hours per week would continue to be eligible for the full insurance benefits paid for by the Board. Thus, all but two of the current employees would continue to be eligible for some level of health insurance coverage.

### FINDINGS OF FACT

Page 45 of the Board's exhibit is a comparison of coverages and eligibility provisions in the health care sections of contracts of surrounding districts. Five districts offer no coverage for employees working less than twenty hours per week; at least four others require twenty five to thirty hours of work per week before either pro-rata or full premiums are paid. Both Dexter and Saline offer a sliding scale of insurance premiums paid based on the number of hours worked. The evidence illustrates that only Lincoln, Ann Arbor and Howell offer employer paid full benefit premiums with as little as twenty hours worked per week.

No evidence was presented during the hearing to indicate what number, if any, of this bargaining unit rely upon the employer fully paid premiums as the sole source of health care coverage for their families, who would now be reduced to single person coverage.

### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the employer proposal regarding eligibility for insurance premiums be adopted.

### Article VIII, "Compensation", Hospitalization Insurance

At issue in this section is the inclusion of the MESSA Care Rider to the existing hospitalization insurance package, Super Med II. Testimony from the Board indicated that both the LEAO and the teachers units accepted the inclusion of the MESSA Care Rider as a precondition to a 5% wage increase. Page 56 of the Board's exhibit illustrates a potential 1987-88 savings in premiums of approximately \$9,700.00, from the acceptance of the MESSA Care Rider by this unit. The Board characterizes this issue as one of parity, as the other Lincoln units have accepted its inclusion, rather than as an ability to pay.

The Association is not opposed to the Board's proposal to limit health care insurance to the employee's immediate family, nor to the MESSA Care Rider, per se. Its opposition lies in the way the MESSA Care Rider has been proposed as part of a larger "package".

### FINDINGS OF FACT

The adoption of the MESSA Care Rider will result in projected premiums savings to the district of approximately \$9,700.00, while the refusal to accept the proposal cost the district an additional \$7,671.60 in 1986-87 premiums. No employee would suffer a reduction in the level or quality of hospitalization coverage as a result of implementing the MESSA Care Rider. The other Lincoln units have accepted this proposal, without the protracted battle that exists here.

### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the parties adopt the MESSA Care Rider as part of their

hospitalization insurance package. A continued refusal of this Rider by the members of this bargaining unit is totally unwarranted, given the quality of the care provided, and the unnecessary additional costs imposed upon the district. The members of this unit must recognize that the district must reduce costs to continue to provide quality education to its students. Acceptance of this Rider helps achieve this goal without a reduction of wages or benefits provided to the employees. Inasmuch as other units had accepted this Rider, one as much as a year and a half ago, this unit must recognize that it has only worsened its bargaining posture with this employer.

#### Article VIII, "Compensation", Section J.2.

##### Hospitalization Option

The current contract allows an employee to select a group option package, including a \$20,000.00 life insurance policy and long term disability insurance coverage, in lieu of hospitalization insurance.

The Board's proposal, found on Pages 43 and 44 of its exhibit, would require the selection of the option, or an annuity for a plan selected by the Board, if the employee is provided health care through the employer of the spouse, or if both spouses are members of the same bargaining unit. In the latter case, one employee is eligible for full family benefits, and the other is eligible for one of the options.

The Association proposes retention of the current contract language. Some concern was expressed by members of the unit to the effect that they did not want to have to choose between insurance coverages, in part because of the items covered, and in part, for personal reasons.

#### FINDINGS OF FACT

Lincoln district teachers, represented by the MEA/WLEA, accepted the same benefit option language offered to the bus drivers. No convincing evidence was presented in opposition of the proposal.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the Board's proposal for Article VIII, Section J.2., be adopted.

#### Article VIII, "Compensation", Section J.4.

##### Long Term Disability Insurance

The district proposes the elimination of long term disability insurance currently provided the mechanic, bus garage manager, and special education

drivers that work during the summer months. Neither the LEAO, nor the teachers unit, receives long term disability insurance. Association Exhibit 32.

Association Exhibit 31 is a comparison of the long term disability insurance provisions in each LSTFA master agreement since the 1977-78 contract. The mechanic and special education drivers have been covered by this provision since 1977-78 and the bus garage manager was added in the 1982-84 contract.

The district contends that this is purely a parity issue, as neither the LEAO represented custodians, who are twelve month employees, nor the teachers, receive collectively bargained long term disability coverage.

#### FINDINGS OF FACT

No evidence was presented by the district, other than its parity argument, to justify the elimination of the long term disability coverage. No other districts were surveyed to offer comparisons of this coverage.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the current long term disability coverage as provided in Article VIII, Section J.4. be continued.

#### Article VIII, "Compensation", Section J.6.

##### Continuation of Fringe Benefits

The district proposes to eliminate its obligation to pay premiums for up to ninety (90) days for an employee on an unpaid leave of absence, and to offer to employees on leave or layoff the option of retaining fringe benefit or payroll deductions by pre-paying same to the employer's business office, or directly to the carrier, if appropriate. Current contract language does not require such pre-payment.

Arguing for retention of the current language, the Association notes that the 1985-88 LEAO contract allows payment to the business office by those on paid leave, while the district pays insurance premiums for a number of months equal to the years of service for those on unpaid leave.

No comparison of language from surrounding districts was submitted by either party. Ms. Thomas stated that the teachers' agreement does not provide for pre-payment, and that the language proposed to this group comports with the statutory requirements of COBRA, the "Consolidated Omnibus Budget Reconciliation Act of 1985".

#### FINDINGS OF FACT

Neither side submitted evidence of comparable provisions in surrounding

districts. The language proposed to this group differs from that contained in either the teachers or the LEAO contracts. No evidence was introduced relative to the number of employees who might be effected by this proposal, or the savings to the district.

#### RECOMMENDATION

Based upon the entire record and the above findings of fact, it is recommended that the district's proposal for Section J.6.(b) be adopted. I find it neither unfair nor unusual that employees on an unpaid leave of absence, which more often than not, is granted as a convenience to the employee, should be required to pay for the fringe benefits being continued. Requiring pre-payment is a judicious safeguard for both the employee and the employer, as the employee is assured of the continuation of benefits, and the employer is insulated from liability which may arise from its failure to make contributions on behalf of the employee.

Should the parties accept the earlier recommendation regarding the eligibility for insurance coverage, it is further recommended that Section J.8. also be eliminated.

#### Article VIII, "Compensation", Section J.9.

##### Prohibition of Dual Coverage

New Section J.9. is proposed by the district to reduce insurance premiums through the elimination of dual coverage. The language excludes from coverage any employee covered under another policy.

The Association is opposed to this language, noting that it is not present in either the LEAO or the teachers' agreement. The current LSTEA contract does not prohibit such duplicate coverage.

#### FINDINGS OF FACT

Although neither side submitted evidence relating to the cost, in premiums and mis-allocated resources, of such double coverage, I will take notice that such costs, to the employer and to society, are both real and substantial. A suitable quid pro quo has been offered by the employer if its election of options proposal in Article VIII, Section J.2.(A) and (B) is adopted.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the district's proposed language of Article VIII, Section J.9. be adopted.

#### Article XI "Paid Leaves"

##### Limitation of the Use of Sick Leave

Article XI of the current contract contains the provisions dealing with

paid leaves, including sick leave and funeral leave.

Based on what it considers to be widespread abuses on the use of this time by members of this bargaining unit, the Board proposed language at page 59 of its exhibit which would restrict the circumstances under which sick pay is available.

The Board's proposal would change Article XI, Section E. to: (1) limit the definition of "immediate family" and delete the reference to "relative or non-relative living and making his or her home in the Union member's household"; (2) reduce the days absent prior to triggering the requirement of obtaining a doctor's certificate prior to returning to work; (3) allow the use of sick leave to make arrangements for the care of sick family members; (4) limit to three consecutive days the amount of sick leave used for the care of a critically ill family member.

Page 60.1 of the district's exhibit demonstrates that 17.70 sick leave days per employee were used by members of this bargaining unit in 1983-84. While the Board readily admits this average has declined recently, it contends that the transportation employees still use twice as many sick leave benefits as employees represented by other bargaining units. The Board maintains that the sick leave provisions are being abused and that additional costs are being incurred through the use of replacement employees, with attendant confusion generated among the school children when their regular driver is absent.

The Association acknowledges the possibility of past abuses and claims the situation has improved, in part due to the counseling efforts of James Nowling. Claiming the Board's proposals are overly restrictive given the recent improvements, the Association proposes retention of the existing language.

#### FINDINGS OF FACT

The record testimony, including exhibits submitted by both parties, leads to the conclusion that the uses of sick days by this unit is both excessive and extremely costly to the district.

Page 60.2 of the Board's exhibit states the total cost of sick days used in the 1985-86 school year, including \$8,147.25 paid to replacement drivers, was \$19,215.44. The cost of the first semester of the 1986-87 school year, including \$7,128.00 paid to replacement drivers, was \$16,811.22. A comparison of the leave days used by the thirty-one eligible transportation employees and the twenty-two custodial employees is interesting. While the total personal illness days used are very close, 173½ versus 172, the drivers used almost twice as many personal business days, 63 versus 33, and nine times as many funeral days. Although the work of the absent custodian may await his return, or be distributed among other workers, the absent bus driver is usually replaced, at considerable expense to the district.

Given the cost of replacement employees, and the comparison of similar provisions in neighboring districts, it is clear that the current contract language which allows the use of sick leave for the illnesses of non-relatives living in the employee's household is overly liberal. None of the districts surveyed on pages 61 and 62 of the Board's exhibit provides for such a use of sick leave. Only two other districts allow the use of sick leave for the illnesses of relatives beyond parents-in-law. Neither the LEAO nor the teachers' contract extend the use of sick leave for family illnesses beyond the parent-in-law relation.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that:

1. The Board's language proposed for Article XI, Section E., subparagraphs (a) and (b) be adopted entirely. The records shows the current provision to be overly broad and presenting an invitation for abuse. Notwithstanding recent "improvements", this unit has used an excessive amount of sick leave days. The establishment of these controls should curb the potential for abuse, and bring this district's contract closer to parity with surrounding districts.
2. The Board's proposal regarding funeral leave be adopted as proposed at page 60 of its proposal. If the parties adopt the recommendation regarding limiting the definition of "immediate" family, many of the days used for funeral leave will be eliminated. In addition, the district's proposal to charge these days against the accumulated sick leave of only those hired after September 1, 1986, is patently fair to the majority of this unit, particularly since a similar provision exists in the LEAO contract, and all teachers are charged funeral leave against their accumulated sick leave.

#### Article XI, "Paid Leaves", Section F.

##### Worker's Compensation - Coordination of Benefits Language

At issue is the so-called "coordination of benefits provision" of the State of Michigan Worker's Disability Compensation Act of 1969 by which the employer may require the employee to select only the worker's compensation benefit.

The following language appears in Article XI, Section F., of the current LSTE contract:

If an employee elects to use sick leave while off duty because of a compensable injury, (Workmans Compensation) and receive his regular earnings, such use may be only to the extent of the difference between the workmens compensation benefits and his or her regular after-tax earnings.

A pro-rata amount will be deducted from the employee's sick leave accumulation.

Thus, the employee is currently afforded the option of utilizing accrued sick leave to supplement any worker's disability compensation received. The Association seeks to retain the existing language.

Language proposed by the Board at page 66 of its exhibit would require the employee to accept only the worker's compensation benefit, without the use of the sick leave as a supplement:

Should this supplemental payment be found to be subject to the coordination of benefits requirements of worker's compensation, such that the amount of the worker's compensation benefit is reduced, the employee shall not be allowed the use of sick leave and shall receive only the worker's compensation benefit provided by that statute.

#### FINDINGS OF FACT

Association Exhibit 41 demonstrates that the districts of Dexter, Saline, Willow Run and Ypsilanti all have provisions similar to the current language in the LSTE contract which allows the employee to supplement worker's compensation benefits with accrued sick leave. The Association's unrefuted testimony indicates no neighboring district has adopted language similar to that proposed by the Board. Of the districts surveyed, only Dexter requires the employee to reimburse the district for the full "amount of wage continuation benefits the employee receives under Worker's Compensation for any day which the employee receives sick pay from the Board".

Page 67 of the Board's exhibit indicates that its proposed language was adopted in its Lincoln teacher contract, a MEA/WLEA unit, and its support staff, a MESPA/LEAO, contract.

Absent a provision such as the one offered by the district, the employer faces potential liability in a coordination of benefits dispute.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the language submitted by the Board at page 66 of its exhibit, and already adopted by its teacher and support staff units, be adopted.

## Article XII , "Act of God Days"

In her remarks, Ms. Thomas characterized this issue as a two-part problem; (1) the current language doesn't allow for make up days; and (2) how to pay for these days if made up.

Article XII, Section B., of the contract provides:

When the employee cannot perform  
his/her duties because of an Act  
of God, he/she will be paid the  
regular daily pay.

Mr. Gray testified that the LSTEA members have always been paid for days cancelled, which statement is supported by the unambiguous language of the contract. His testimony further revealed a scheduled school year of 182 days, including 178 required student instructional days. Mr. Gray stated the Association's objections to the Board's proposal is one of pure economics, as the proposed language could reduce the drivers' pay by as much as four days.

In support of its request to retain current language, the Association submitted several exhibits. Exhibit 42 is a comparison of the current non-scheduled closing provisions of the LSTEA, LEAO, and WLEA/MEA agreements with the Lincoln district. Exhibit 43 is a comparison of the current LSTEA language to the Board's initial proposal and its proposal at fact finding. Exhibit 44 is a comparison of similar provisions in nine Washtenaw districts.

Pages 70-74 of the Board's exhibit represent the proposed contract language, a comparison of non-scheduled closing language in fourteen other districts, and a comparison of similar provisions in other Lincoln district bargaining units.

## FINDINGS OF FACT

Exhibit 44 submitted by the Association illustrates a variety of provisions which require payment of drivers for work performed up to the then current requirement of 180 student instructional days. For example, Chelsea drivers are compensated for, but not required to report to work on, non-scheduled closing days. Later, if the days are made up, they are required to work without compensation, up to the 180 student instructional days.

Dexter does not provide for make up days, but does compensate the drivers up to 180 days. The work year for Manchester drivers is "equal to the number of student instruction days", which currently may be as few as 178 without loss of state aid. Milan and Saline drivers are paid a maximum of two non-scheduled closing days per year, without provision for make-up days. Whitmore Lake, Willow Run, and Ypsilanti all compensate the drivers in the event of non-scheduled closings.

Of the districts represented on pages 72-73 of the Board's exhibit, only Hartland and Chelsea have enabling language to compensate the drivers for

working a make-up day. Page 74 of the same exhibit compares the LSTE unit with the teachers and support staff employees of the Lincoln district. Teachers are required to make up, and are compensated for, up to 178 student instructional days. Hourly employees who are members of the LEO/MESPA unit are paid when the days are made up, up to 178 days.

#### RECOMMENDATION

1. The parties should recognize that the new state law requires a district to provide a minimum of 178 days of student instruction before facing a loss of state funding.
2. Inasmuch as the other Lincoln bargaining units have accepted contract language which would pay them for days made up, up to a total of 178, in accordance with state law, a similar provision should be accepted here.
3. The Board's position at fact finding should be amended to reflect the above recommendation and clarify subparagraphs (B) and (C) to guarantee payment of up to 178 days, or to the total student instructional days, if cancelled and later made up.

#### Appendix A - Classifications/Job Descriptions

Current language defining a "regular" driver states

No driver shall be allowed to run more than the equivalent of eight runs per day if the work time accumulated would deny an employee rights guaranteed under wage and hour provisions of state law.

The Board would propose a reduction of the eight runs to six runs, citing its concern with the overtime requirements of the Fair Labor Standards Act (FLSA) as applied to public sector employers by Garcia v. San Antonio Mass Transit Authority, \_\_\_ U. S. \_\_\_, 105 S. Ct. 1005, 83 L. Ed. 2d 1016 (1985). Claiming that drivers are unable to complete eight runs in an eight hour day while having the required "personal" time between runs, the Board would reduce the number of runs in a day in order to avoid the overtime obligations of the FLSA.

The Association, in particular Ms. Norris, contends that the Board's proposed reduction in daily runs would reduce the drivers' earning capacities. She stated that she has taken as many as nine and one-half (9½) runs per day with "personal" time between runs, and has not worked more than eight hours per day. She maintains that eight runs, including the "personal" time between them, can be made without creating an overtime situation.

#### FINDINGS OF FACT

The Lincoln school bus drivers are currently prohibited from working more than eight runs in a single day, if such work time would deny them rights

guaranteed under state law. The application of the overtime provisions of the FLSA to state and municipal employers obligates this district to the payment of overtime for daily hours worked beyond eight. The district does not wish to incur additional financial liability for the overtime and would propose a reduction in the drivers' earnings in order to avoid such liability.

The uncontroverted record testimony leads to the conclusion that eight runs, including "personal" or relief time between them, are completed well within an eight hour day.

Neither party introduced evidence substantiating the economic impact of its position. I can conclude that the reduction of a driver's work day by two runs will have an equivalent impact on his or her earnings, given a per run wage rate. However, I cannot conclude on the record in this case, that the employer's concerns are warranted.

#### RECOMMENDATIONS

Based upon the record as a whole and the above findings of fact, it is my recommendation that the status quo be maintained with regard to the number of runs available in the drivers' work day. While I am cognizant of the district's overall goal of creating a more efficient transportation department, I cannot concur in this particular effort.

No evidence of excessive overtime currently paid was presented during the hearing. So long as other avenues are available to the transportation department to monitor and control the hours worked by the drivers, and thus the overtime premium paid, I cannot recommend the adoption of language which would clearly reduce the drivers' earning capacities and possibly create new opportunities for abuse of overtime.

#### Appendix C - Wage Schedules

Wage rate proposals were introduced by the parties as page 75 (a) of the Board's exhibit and Association Exhibit 47. The Association also introduced Exhibits 45 (a) - (c), which illustrate the salary schedules in the 1985-88 teachers' contract, and 46 (a) - (c), which are the wage schedules in the 1985-88 LEAO contract. Each of these agreements provides for a 5% increase in each of the contract years.

The Board proposes a 1985-86 increase of 3% for all classifications within this unit, excepting drivers on late runs or field trips. Late runs would continue to be paid at the existing rate of \$10.05 per run, and field trip driving time would be compensated at \$8.55 per run, with non-driving or lay-over time would be paid at \$5.00 per hour. The 1986-87 increase would equal 1.5%, in part due to the added premium cost incurred by the district due to the unit's refusal to accept the MESSA Care Rider option. Similar increases are proposed for the mechanics.

The Association proposes a unit wide increase of 5%, without reduction for the added health care premium cost. Mr. Gray testified that the Association opposes the district's proposal, characterizing it as a "punitive" reaction to the employees' refusal to accept the MESSA Care Rider. A review of

Association Exhibit 47 indicates hourly wage differences between the proposals ranging from 17¢ in the 1985-86 offer for a licensed mechanic at Step I, to as much as 50¢ for a bus driver on a late run in the 1986-87 contract year.

No testimony was given to support the Board's proposal "freezing" the late run pay at the current hourly rate of \$10.05 per hour. As submitted, its proposal would pay \$1.02 more than a regular run in 1985-86, and 66¢ more in 1986-87. The largest gap between Board and Association proposed wage rates, 50¢, exists for late run drivers.

Board Exhibit 76 is a composite hourly rate and fringe benefit schedule for Lincoln and the fourteen neighboring districts. By the Board's calculations, the Lincoln drivers would maintain the highest hourly minimum rate under either proposal. However, the Lincoln drivers would become fourth under the Board's proposal and second under the Association's proposal within the maximum hourly rate comparison. Drivers in the three districts with a higher maximum rate reach the maximum rate in ten years, whereas Lincoln drivers attain the rate in two years.

The greatest difference between the parties in wages exists regarding field trips, which are currently paid at \$8.55 per hour, for both driving and non-driving time. The Association proposes a 5% increase to \$8.98 per run, for all time spent in the service of the employer.

#### FINDINGS OF FACT

The Board's proposal for Appendix C includes a three percent increase in each of two steps for 1985-86, and a one and one-half percent increase in 1986-87. Excluded from these increases are late runs and field trips. The Board wishes to "freeze" the rate paid the former while establishing driving and non-driving rates for the latter. The Association proposes a 5% increase in each classification in each of the contract years.

No evidence was submitted by the district to support its request that late run pay be maintained at the current rate. Inasmuch as the late run pay rate is considerably higher than the regular run pay, it is reasonable to conclude that it is a premium run, perhaps because by definition it could interfere with the evening obligations of the drivers. If the district requested the freeze in an attempt to close the gap between regular runs and the late run, it did not so state.

The record indicates that the 1986-87 cost of field trips was \$12,000. The Board proposes to freeze the rate for driving time at \$8.55 while reducing the non-driving time rate to \$5.00. Brighton and Saline have a non-driving rate which is less than the driving time rate for field trips. Four of the districts surveyed pay a stated field trip rate which is less than the regular rate of pay. Pinckney pays the same rate for driving and non-driving field trip time while Dexter's rate is equal to its regular run pay.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that:

1. Unit wide increases of 5%, minus a percentage amount equal to the increased premium cost occasioned by the unit's refusal to accept the MESSA Care Rider, be implemented for each of the contract years.
2. These increases shall apply to the late runs and to field trip driving.
3. A reduced rate for non-driving time while on field trips should be adopted. It is recognized that this is non-productive time necessitated by the nature of field trips during which the driver is often released from duty or responsibility for the vehicle and its passengers. Other districts with reduced lay over pay range between \$4.00 and \$7.30 per hour. Therefore, I suggest that the non-driving field trip pay be increased to \$6.00 per hour. This provides the district with a much-needed reduction in this non-productive time, yet lessens the burden on the drivers for this first-time reduction in non-driving rates of pay.

#### Duration of the Agreement

Each of the five prior contracts has been of two years duration. The 1985-86 "agreement" was implemented by the employer following a rejection of its last offer. The LEAO and WLEA/MEA contracts expire in 1988. Neither party expressed strenuous opposition to a three year contract from 1985 to 1988.

#### FINDINGS OF FACT


The bargaining history of the parties, including the recent implementation of a rejected final offer, the demonstrated difficulty in reaching accord on virtually all items subject to bargaining, and the acrimony apparent during this fact finding, convince me that the interests of stability in the conduct of labor-management relations between this district and employee association, would best be served by a longer contract term.

#### RECOMMENDATION

Based upon the record as a whole and the above findings of fact, it is recommended that the parties conclude a three-year agreement, to run from July 1, 1985 through June 30, 1988.

#### CONCLUSION

The above Report, along with the Index to Submissions attached hereto, represents the Findings of Fact and Recommendations arrived at following the hearings conducted by the Fact Finder. I will retain jurisdiction of this matter.

  
Raymond J. Buratto

Dated: August 31, 1987

## INDEX TO SUBMISSIONS

### Submitted by the Lincoln Consolidated Schools

A loose-leaf binder marked as "Board's Exhibit" containing pages numbered 1 through 82.7.

### Submitted by the Lincoln School Transportation Employees

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2. Letter of August 19, 1985
3. Article XI - Paid Leaves
4. Article XII - Act of God Days
5. Article XXX - Route Selection
6. Appendix A
7. Duration of the Agreement
8. Article VIII - Compensation
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28. History of Eligibility Provisions - LSTEAContracts
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42. Act of God Provisions - LSTEALongevity Pay, LEAO, and WLEAContracts
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I N D E X   T O   S U B M I S S I O N S (continued)

Submitted by the Lincoln School Transportation Employees

- 45 (a). 1985-86 Salary Schedule for Lincoln Teachers
- 45 (b). 1986-87 Salary Schedule for Lincoln Teachers
- 45 (c). 1987-88 Salary Schedule for Lincoln Teachers
- 46 (a). 1985-86 Wage Schedule for LEAO Members
- 46 (b). 1986-87 Wage Schedule for LEAO Members
- 46 (c). 1987-88 Wage Schedule for LEAO Members
- 47. Comparison of Offers for Appendix C - Wage Schedule LSTE Contract