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George T Bounsell, Jr.
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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

LABOR AND INDUSTRIAL RELATIONS LIBRARY

In the Matter of:

LINDEN BOARD OF EDUCATION

-and-

LINDEN EDUCATION ASSOCIATION

_____/

REPORT OF FACT FINDER
AND RECOMMENDATIONS

Appearances: For the Linden Board of Education:

David E. Bant, Superintendent
Don Kinsman, Assistant Superintendent
Robert Bensinger, Jr. High Principal
John Hall, High School Principal
Duane M. Tester, President of the Board of Education
James E. Gundry, Elementary Principal

For the Linden Education Association:

S. Boyd Yang, Chief Negotiator
Beverly A. Fisher, Negotiating Team Member
Greg Warner, Negotiating Team Member
Dale Cudworth, Negotiating Team Member
Olive Shinabery, Recorder Team Member

Linden Board of Education

Linden is a small community in Genessee County, Michigan. It is what is known as a bedroom community having very little industry and most of its citizens working elsewhere.

This description of Linden is indicative of the financial problems that have beset the school district. In recent years the Linden School District was in the unenviable position of having lost five (5) elections for additional operating mileages preceding the passage of a fourteen (14) mill levy on the sixty (6th) try last

June, 1969. This levy was only passed for one (1) year. Thus within one (1) year, the Board is going to have to go back to the voters for funds. The situation was so critical in Linden that many of its fine programs were curtailed.

The bargaining history between the Linden Board of Education (hereinafter referred to as "Board") and the Linden Education Association (hereinafter referred to as "Association") has required the use of a Fact Finder in two successive years. The parites have not been able to arrive at an agreement through collective bargaining or with mediation.

This Fact Finder may also note in passing that in the fall of 1968 the Fact Finder in Linden was Professor William Gould of Wayne State University,oone of the most experienced Fact Finders in the country. Thus, Linden has received substantial outside professional help in arriving at its contracts.

One more point needs to be mentioned. Fact Finding only comes into play after the parties have exhausted collective bargaining and mediation. A Fact Finder attempts to recommend a settlement that both parties can live with or, in other words "reluctantly" accept. Neither party may be overjoyed with the Fact Finder's report, and its recommendations because the recommendations are usually conceived in compromise and therefore are compromises.

It is with this background plus the above discussion of the aims of the Fact Finder, that this Fact Finder now proceeds to discuss the issues before him and make recommendations.

The overwhelming fact in this situation is the precarious financial situation that the Board finds itself in.

It is shocking to find that the citizens of Linden are demanding good education and yet on five separate occasions they rejected a millage

though to their credit they finally did pass a fourteen (14) mill levy. It is quite clear that both the Board and the Association will be most concerned about the forthcoming millage election to replace the millage now levied and to add millage which is obviously necessary. Linden Education must be adequately financed by the voters. The teachers are entitled to adequate renumeration. In turn other educational costs are going up.

Because of the need to again go to the voters, this Fact Finder believes that it is most essential that the Linden School District have labor peace for at least the next two (2) years. Though there has been no disruption of school, there has been the need for fact finding, and as indicated above, the district has been blessed with the presence of an outstanding Fact Finder last year. This must stop. Parties should not wait until October to arrive at a contract. For this reason, the Fact Finder is recommending a two (2) year contract with an economic reopener. The recommendations in this Report are geared to a two (2) year contract. It is all part of one package. Remember, Fact Finding is a compromise. The Board believes that a two (2) year contract is essential so that it can present the argument to the people of the district when seeking millage that there will be labor peace in Linden. The Association should have no objection to a two (2) year contract with an economic reopener because the Association admits that it has a good contract language wise. The Fact Finder agrees with the Association particularly in view of the fact that he intends to make certain recommendations below that will improve to some extent the language of the contract and thus make the contract a more desirable document

from both the point of view of the Board and the Association. It is hoped that their improvements will underline the fact that the Association cannot reasonably object to a two (2) year contract with an economic reopener. The economic reopener protects the teachers. In the second year of the contract, they can open the contract as to economic issues and make the necessary economics improvements that are desired.

To assure the above recommendation, the Fact Finder specifically recommends that the following language be included in the contract:

"ARTICLE - _____

Duration

This Agreement shall be in effect as of the first day of July, 1969 and continue in full force and effect of two (2) years through the 30th day of June, 1971, provided that, the Association may reopen this Agreement on or after March 1, 1970 for the purpose of negotiating over teachers' salaries including extracurricular pay, and fringe benefits for the 1970-71 school year."

The big issues before this Fact Finder, of course, are economic and they deal with salaries, fringe benefits, and extracurricular pay.

Most obviously, the economic health of the district looms heavily over any discussion of economics. The Fact Finder must again emphasize the precarious position that the Linden School District finds itself in. We must again emphasize that the district is fortunate that it did receive a fourteen (14) mill levy. But this came only after a drastic cut in programs. The district financially speaking is far from "out of the woods" for it must again go back to the voters and ask for renewed millage plus obviously increased millage to keep up with the increased cost of education. Under these circumstances it would be entirely unfair to both the Board and the teachers to ignore the economic realities of the

situation. Very frequently, one can insist on high salaries, receive them, and then get a voter millage rejection. Freq[illegible] this Fact Finder, has been willing to take the voters on and urge them to vote more millage and had done so in a number of districts. The Fact Finder does so here. However, this Fact Finder must again emphasize that the district is in a precarious financial situation for the reasons stated. As a result, his recommendations in the area of economics has been tempered so as not to offend the voters of the district. Yet, on the other hand, he emphasizes to the voters that they must support education in Linden. The cuts in program last year were tragic and unfair to the Board, to the administrators and to the teachers. The Fact Finder only hopes that the voters recognize this and step up and be counted when asked to vote for millage. The Fact Finder is convinced that this Board and this Administration is not unreasonable in their request to the voters. Likewise, the voters must recognize that teachers must live. The voter must provide funds in the future to provide a livable wage for their teachers to keep and attract the teachers so that their children can be educated so that they can compete with children of other districts where the voters are making funds available for education.

With this background the Board prepared a budget which the Fact Finder has examined very carefully. The Fact Finder finds that the budget is well prepared and is a fair budget. Teachers must recognize that they are only one component of an educational system. There are bus drivers. There are cafeteria help. There are custodians. There are repairs. There are administrators. There are books to be bought. There are lights. There are heating problems. There are many other cost items in running an educational system. It is true that teachers are the most

dominant part of an educational system. Nevertheless, it must be recognized that funds must be applied in all areas in order to have an efficient educational program.

As the Fact Finder reviews the budget, he finds that prior to the Fourth Friday Count, the budget was based upon one million two hundred seventy-five thousand nine hundred six ($1,275,906) dollars available funds which meant that the budget had about a sixteen thousand ($16,000) dollar surplus. This budget was based upon an estimate membership count of two thousand eighty-five (2,085) students. It turns out that the actual Fourth Friday Count was two thousand seventy-two (2,072) students. This meant a reduction in state aid of seven thousand one hundred thirty-two ($7,132) dollars which in turn reduced the surplus to approximately nine thousand ($9,000) dollars. A surplus of nine thousand ($9,000) dollars in a budget the size of Linden is not very much. There are many contingencies such as heavy snowfall, a boiler breaking down, or a roof in need of repair which could very well eat up a surplus of this type. Or for that matter suppose there is a flu epidemic which requires an unusual number of substitutes and the resulting substitute pay?

In the proposed budget the Board budgeted about seven hundred seventy thousand ($770,000) dollars for renumeration to teachers. The Board believes that it cannot possibly go over this figure because of other commitments in the budget, which the Fact Finder believes are fair. The Board believes that if it goes over this figure it will eat up its small contingency fund and again throw its budget out of kilter.

With this background on the financial condition of the district and the budget, the Fact Finder now turns to the position that he found the parties in as to economics. In regard to salary, at the time of the Fact Finding, the Association was asking for a seventy-seven hundred ($7,700) dollars base with four (4%) percent increment increases. The Board's position was a seven thousand fifty ($7,050) dollar base. The Fact Finder believes that both positions were unrealistic and not consistent with comparisons with other district and finances of Linden.

In making recommendations as to salary, Fact Finders consider two basic criteria, namely, the financial condition of the district and comparisons with other surrounding districts. Fact Finders also consider the positions of the parties.

We have already discussed the financial condition of the Linden School District. The comparisons of surrounding districts are limited because a number of districts in Genesee County as of the time of the Fact Finding hearing had not settled their contracts. However, in Exhibit SS presented by the Association, there are eight (8) listed districts nearby which have settled contracts. Of the eight (8) two (2) were below a base of seventy-two hundred ($7,200) dollars, three (3) were above the base of seventy-two hundred ($7,200) dollars and two (2) were at seventy-two hundred ($7,200) dollars.

In discussing the positions of the parties, it became clear that the Board recognize that its offer of seven thousand fifty ($7,050) dollars was low and not consistent with the eight (8) abovementioned settlements for the 1969-1970 school year. The Association at one point during negotiations did use the figure of seventy-three hundred ($7,300) dollars base with a four (4%) percent index. So despite the fact that the parties at the beginning of Fact Finding seemed far apart, they actually were much closer than the surface would indicate.

Considering the financial condition of the school district, the positions of the parties in negotiations and as they entered Fact Finding and comparisons with other districts, the Fact Finder is convinced that the appropriate BA minimum in Linden should be seven thousand two hundred fifty ($7,250) dollars with a four (4%) percent index. The index would mean that each step on the BA would be four (4%) percent higher than the previous step. The BA+15 base would be two hundred fifty ($250) dollars higher than the BA base with four (4%) percent increments as in the case of the BA schedule. Likewise the MA base would be five hundred ($500) dollars higher than the BA base and the MA+15 would be seven hundred fifty ($750) dollars higher. The MA and the MA+15 scales would have four (4%) percent increments. The reason why the Fact Finder has followed this pattern is because it is the same pattern that the parties followed last year. They were really not apart in negotiations this year as to the pattern except that the teachers desired to have the four (4%) percent both

vertically and horizontally. However, the Fact Finder believes that the past pattern of a four (4%) vertical increase and the pattern of horizontal increases of two hundred fifty ($250) dollars is the best approach. The Actual salary schedule is attached to this Report as Exhibit I. It not only includes the salary schedule but foot notes 1, 2 and 3 which the Fact Finder understands 2 and 3 have been agreed to by the parties and 1 is the Fact Finder's view point as to experience credit.

No doubt, the Board would be more satisfied with the seven thousand two hundred ($7,200) dollars base. No doubt, the Association would be more satisfied with the seven thousand three hundred ($7,300) dollars base. But the Fact Finder points out to both parties that the seven thousand two hundred fifty ($7,250) dollars base compares favorably with eight (8) districts reported in the Association's Exhibit SS. It is true that there was some districts that pay form seventy-one hundred ($7,100) dollars to seventy-two hundred ($7,200) dollars but the Fact Finder believes that these districts are somewhat low as compared with what might be the settlements in other Genesee County districts. Furthermore, the Fact Finder believes that the settlement in Genesee of seven thousand five hundred ($7,500) dollars is to be disregarded because of the unusual circumstances in that district and the unusual salary schedule. Likewise, consideration of the Pontiac schedule or any Flint schedule is not appropo because of the wealth of those districts plus the fact there are different teaching conditions in Pontiac and Flint.

In connection with the consideration of salary, the Fact Finder's attention was drawn to fringe benefits. The Board has indicated that they still must keep within their seven hundred seventy thousand ($770,000) dollars proposed budget. The Board, however, was willing to improve the fringe benefit package. There is some merit in this approach because of course it provides protection for the teacher that otherwise would cost the teacher money out of his salary. It provides this protection with tax free dollars. In other words, the teacher does not have to pay additional income tax in order to get these benefits. Specifically, recognizing that the Board would not be adverse to a program of fringe benefits, providing the program was within the budget, and recognizing that the Association favors a fringe benefit program, this Fact Finder has the following recommendations for fringe benefits.

This Fact Finder recommends that the Board pay the full family hospitalization and medical care for teachers desiring same. The plan can either be Blue Cross-Blue Shield, M75 - MVF or the Michigan Education Association plan that is equivalent to this Blue Cross-Blue Shield plan. The choice will be the teacher's. In addition, this Fact Finder recommends that the Board contribute twelve ($12) dollars per month per teacher for the purchase of an income protection and life insurance program. The carrier will be the choice of the Board and the amount purchased will be limited to what twelve ($12) dollars will buy. It may be that the Board will continue dealing with the Washington National Life Insurance Company or it may adopt another program with another carrier. The point is, it shall be limited twelve ($12) dollars per teacher.

The final item dealing with economics is a question of extra-curricular pay for certain duties.

Extracurricular pay is somewhat of a delicate subject in Linden. As a result of the financial crisis of last year most of the extracurricular pay was eliminated from the contract and many of the extracurricular activities were cut back. Both the Board and the Association advised the Fact Finder that as a result of the fourteen (14) mill approval, many of the programs are being reestablished. Nevertheless, the district is still in a precarious financial situation. The Board must go to the voters and ask for a renewal of the fourteen (14) mills and for additional millage. The Board must be in a position of reestablishing the programs and yet showing sound financial management. From both the Board's and the Association's point of view, it is essential that the programs remain intact.

On the other hand, the cost of living is going up and teachers are entitled to be paid additional sums for the extracurricular activities which they undertake. After all many of the citizens of Linden who work for General Motors expect to get paid when they work overtime. Extracurricular pay is somewhat like overtime. Each year that the contracts at General Motors are in effect, there is an increase in the overtime rate because of base rate increases. The same thing applies to extracurricular pay.

However, because of the precarious financial situation, this Fact Finder is inclined to go "slow" in establishing the rates for extracurricular pay because he recognizes that the issue again will be the subject of further negotiation next year or the year after. He appreciates the fact that the coaches would like to be paid on a percentage bases to give more recognition to length of service.

But this is not a universal practice and it does not necessarily follow that pay should be on a percentage basis. Many districts pay a set amount.

This Fact Finder, therefore, is recommending an increase in the following positions based on a set figure. The recommendation will be ten (10%) percent over the amount paid by the Board or the Boosters (whoever paid for the position) the last time the position was filled. In other words, if for example the Board or Boosters paid the head coach six hundred fifty ($650) dollars then the new pay would be seven hundred fifteen ($715) dollars. The exact figures as to the previous pay for the various positions were not made available to the Fact Finder. The Fact Finder will leave it to the parties to draw up the schedule in accordance with this recommendation. The positions just referred to are:

BOY'S ATHLETICS-HIGH SCHOOL (9-12)

Head Coach - Football
Head Coach - Basketball
Head Coach - Baseball
Head Coach - Track
Head Coach - Golf
Head Coach - J.V. Football
Assistant Varsity Football Coaches
J.V. Coach - Baseball
Freshman Basketball

BOY'S ATHLETICS * JUNIOR HIGH (7-8)

Head Coach - Football (2 each)
Head Coach - Basketball (2 each)
Head Coach - Track (1)

GIRL'S ATHLETIC * HIGH SCHOOL

Head Coach - Speedball
Head Coach - Track
Head Coach - Softball
Head Coach - Basketball
High School Cheerleading Coach

The same statement made as to the coaches shall also apply to the following three music positions, namely, that the parties filling these positions will get ten (10%) percent more pay than they were paid either by the Board or the Boosters last year or the last time the position was filled. The positions are:

High School Band Director
Assistant Band Director
Vocal Music Director

As to the following positions the Fact Finder is accepting the recommendations of the Association:

MISCELLANEOUS ACTIVITIES

Director of Class Play (2 each)	$200.00
Assistant on Musical	$150.00
Supervisor of Yearbook	$300.00
Audio-Visual Director (each building)	$100.00
Senior Class Advisor (2)	$100.00
Junior Class Advisor (2)	$100.00
Sophomore Class Advisor (4)	$ 50.00
Freshman Class Advisor (4)	$ 50.00

WORKING AT ATHLETIC EVENTS

Gate Manager	$ 8.00
Ticket Seller	$ 6.00
Ticket Takers (2)	$ 6.00

There are four (4) positions that the Association asked for pay that the Fact Finder is recommending not be paid extracurricular pay. The Fact Finder does not recommend extracurricular pay for the department heads, for the advisor to the FTA, for the Junior High cheerleading coach or for the Director of Forensics. It may be that in the future these positions may be paid for, but for the time being, in keeping with the philosophy "of going slow" because of the financial position of the district, the Fact Finder has chosen to recommend no payment for these positions as these positions in the past have not been extracurricular paid positions.

In the area of remedial reading, speech correction and vocational certificate teachers, it was recommended by the Association that the parties receive a five (5%) percent premium over their pay on the salary schedule. The Board did not seriously object to such a proposal. Therefore, the

Fact Finder will recommend same.

In the final analysis, one must keep an eye to the voter in writing a Fact Finding Report with Recommendations. The recommendations must be consistent with the voter's reactions. We believe that the above recommendations are fair and we believe that they will give the Board the vehicle with which to be able to ask the voter for the funds that it needs to operate the school system. Teachers must keep this in mind in considering the entire Report and Recommendations.

The Fact Finder now makes the following recommendations as to the non-economic issues that were presented to him.

A basic issue to both parties was the question of binding arbitration. The Association wishes binding arbitration as the terminal point in the grievance procedure. The Board has resisted same, suggesting that such a clause was not legal. Furthermore, even if the Fact Finder were to recommend a binding arbitration clause, the Board wishes in return delete the maintenance of standard clause suggesting that such a clause would not be necessary in the contract in view of the protection afforded by providing for arbiration.

As to the legality of a binding arbitration clause, this Fact Finder in the dispute in 1968 between the Gladwin Board of Education and the Gladwin Education Association in which this matter came up, wrote the following language as to the legality of binding arbitration:

" It is true that the Attorney General of the State of Michigan rendered Opinion dated May 26, 1967, Opinion No. 4578, which would seem to indicate that a public employer cannot agree to binding arbitration. But this Opinion has been challenged both in the courts and before the Michigan Labor Mediation Board. In its famous case, Oakland County Sheriff's Department, CCH Labor Law Reporter, ¶49,912, the Labor Mediation Board unanimously rejected the contention that a public employer cannot agree to binding arbitration. In the Oakland County Sheriff's case, the Board made it very clear that as far as a grievance procedure is concerned binding arbitration is certainly permissible on the part of a public employer.

Not only is this the position of the Board but it is the position of a distinguished circuit court in Michigan, to-wit: the Berrien County Circuit Court. In Local 953, International Union of American Federation of State, County and Municipal Employees v. School District of City of Benton Harbor, 56 L.C. ¶51,775, Judge Byrnes, rejecting the Attorney General's opinion held that binding grievance arbitration was permissible. In so doing, Judge Byrnes said (at p.65, 980):

> 'The Attorney General in his said opinion states, '...it is abundantly clear that the Board of Education is not required by that Act to agree to a proposal or be compelled to make a decision.' This is what this Court has just stated. But this applies before the contract, if any, is made. The Attorney General does not state whether once the concession is voluntarily made by the public employer, as was done by this defendant, that the concession (i.e., binding arbitration) is not enforceable. The Attorney General's opinion is as to conditions and rights before the contract, not after the contract itself is voluntarily made, which is this present cause.'

As I read the Attorney General's Opinion, the Attorney General's Opinion is not addressing himself to compulsory binding arbitration as a terminal step in a grievance procedure but rather is speaking of the foregoment of the basic right to bargain before the contract is entered into which is entirely different. Apparently, at least one circuit court and the experts of the Labor Mediation Board agree with this interpretation.

> I go one step further. Compulsory binding arbitration has been favored by no less a body than the Supreme Court of the United States as a means of resolving industrial disputes arising from individual grievances. See the now famous trilogy, United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Company, 363 U.S. 574 (1960); United States Steelworkers of America v. Enterprise Wheel & Car Corporation, 363 U.S. 593 (1960).
>
> As a matter of fact, it is my view as expressed by the Supreme Court of the United States as reiterated by the Labor Mediation Board and the Berrien County Circuit Court, that it is a matter of public policy to favor arbitration both voluntary and binding as a means of bringing an end to disputes.
>
> This concept of compulsory arbitration is even more appropos in teacher contracts because by statute apparently (although I do not rule on this point) it is illegal for a teacher to strike. In the aforementioned trilogy of cases the Supreme Court said that a compulsory binding arbitration clause was the quid pro quod for a no strike pledge.
>
> If teachers are prevented from striking, and they have a genuine grievance it should be processed through a grievance procedure that terminates in compulsory binding arbitration. Such a procedure is the quid pro quod for no strikes. By making this statement I am passing no judgment on the negotiation procedures in negotiating a contract. I am speaking primarily about grievances that arise during the course of a contract."

There is no question in the Fact Finder's mind that binding arbitration in school contracts is to be favored. It is favored in contracts in private employment. It serves as a safety valve.

Furthermore, may the Fact Finder suggest, that after two years' experience with the clause, he predicts that if the parties have an arbitration, he will be surprised. Arbitration clauses though available in contracts are not used with frequency for the parties are usually able to settle their grievances. However, they are in contracts as a safety device for those rare occasions where the parties cannot settle a grievance for one reason or another.

The recommended grievance procedure for the new contract is attached hereto as Exhibit II. It is approximately the same language as proposed by the Association with two changes. The financial limitations are taken out at this Fact Finder thinks financial limitations hamper arbitration. Furthermore, the Fact Finder has taken out the reference to mediation, because mediation properly should only be used when parties cannot reach agreement over a contract as to the grievance procedure. It is the opinion of this Fact Finder and it is the general belief among those working in the field that mediation should play no part in the grievance procedure. Either the parties should settle their own grievances or they should take it to arbitration with an arbitrator who has final authority to make a final disposition. A mediator does not have such an authority.

The Fact Finder also agrees with the Board of Education that in return for a binding arbitration clause the maintenance of standards clause should be eliminated and hereby recommed that Article XV of the contract be eliminated. It may be that in a first contract, there is a need for maintenance of standard clause but not in subsequent contracts. The standards that have been established and developed during the first contract are written in the subsequent contract and can be enforced through arbitration, if necessary. Thus, there is no need for a so-called maintenance of standard clause. It is unfair to a Board that is being asked to agree to binding arbitration. However, there is one clause in Article XV, which the Fact Finder believes should be in the contract. Therefore, the following clause should be placed in Article XIX of the contract:

" It is recognized that well kept teaching stations are necessary to good educational atmosphere. The Board agrees to keep the buildings reasonably well equipped and maintained."

Article IV in last year's contract contained a so called agency shop clause. The parties have some disagreements about including such a clause in this year's contract. After reviewing the clause and recognizing that the parties bargained for such a clause in last year's contract, it is the recommendation of the Fact Finder that the same clause, Article IV, using the same language remain in the contract.

Article IV is consistent with most Agency Shop clauses now in existence in Michigan Teacher Contracts.

In area of recognition, Artile I, paragraph B, seems to be in dispute. The parties are not in agreement as to the following language:

> " The Board agrees not to negotiate with any teachers organizations or individual teachers with regard to the terms of this agreement other than the Linden Education Association for the duration of this Agreement."

The Fact Finder recommends the inclusion of such a clause in Article I because such a clause is a restatement of the law of Michigan namely, Act 379 of the Michigan Public Acts of 1965. The Linden Education Association has been recognized as the collective bargaining representative of the teachers and therefore the Board is duly bound to deal with the Association. Thus, the inclusion of this clause is purely a restatement of the law.

In the area of Association and teacher rights, Article II, the parties have agreed on all clauses except clause F. Clause F reads as follows:

> "F. Teachers shall be entitled to full rights of citizenship and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher. The private and personal life of any teacher is not within the appropriate concern or attention of the Board. However, a teacher should abstain from conduct which adversely affects his relationship to the students or the discharge of his teaching duties."

The Board objects to the sentence "The private and personal life of any teacher is not within the appropriate concern or attention of the Board".

The Fact Finder believes that clause F as recited above is fair to both parties. It protects the teacher and it protects the Board. Certainly, the fact that a teacher is of a certain religious

belief, has marital problems or has certain political beliefs which do not in any way affect his relationship with the students or the discharge of teaching duties is of no concern of the Board. The clause also contains the following language:

> "However, a teacher should abstain from conduct which adversely affects his relationship to the students or the discharge of his teaching duties."

Thus, if a teacher should get involved in an unusual embarrassing situation, with or without students, that adversely affects his relationship to students or the discharge of his teaching duties, the Board would have ample protection to assert its managerial rights. Thus, as a Fact Finder sees it, the teacher is protected by preserving his privacy and the Board is protected by giving the Board the right to take action in certain circumstances. Therefore, the Fact Finder has no choice but to recommed the inclusion of clause F, as set forth above.

In regard to class size, the opening statement of the Association at Fact Finding indicates that the Association is agreeable to the class size maximum as set forth in the contracts for the years 1967-1968 and 1968-1969. In the 1968-1969 contract the parties agreed that a teacher teaching a class exceeding the maximums established in the contract would receive thirty-five ($35) dollars per pupil in excess as of enrollment on October 28, 1968.

The Association wishes to increase the thirty-five ($35) dollars excess to one hundred ($100) dollars. The Board, on the other hand takes the position that the penalty is unfair and unnecessary.

It is quite clear that the Board has made all efforts to keep class sizes within the maximums. In view of this and in view of the past collective bargaining history of the parties, it is the recommendation of this Fact Finder that the language of last year's contract as

to class size remain and that the penalty provision remain at thirty-five ($35) dollars. After all, this is one of the few contracts that has such a penalty and for this reason, this Fact Finder sees no reason why the penalty clause should be increased. Furthermore, by the Board's own admission, the penalty has not been a serious expense item for the Board has avoided classes in excess of the maximums.

There were three issues before the Fact Finder dealing primarily with the management of the school district, namely, the question of the qualification of a teacher, teacher's aides and age limits.

Article VII deals with qualifications and assignments. The only issue in dispute between the parties is paragraph B of that Article which is as follows:

> "The employment of teachers upon special certificates is to be permitted only in cases of absolute necessity or where the teacher has outstanding credentials".

Apparently, the Association would like to have all teachers possess certificates. However, this is not always possible particularly in view of the unavailability of a teacher or the possiblity of getting a person of outstanding credentials to teach a particular course. The Board has indicated its willingness to abide by state law and to continue to attempt to hire teachers with certificates. The Fact Finder believes that the aforequoted paragraph B is sufficient to protect both the teachers and yet permit the Board managerial rights that it needs in order to run an efficient school district. For this reason I recommend that paragraph B be included in the contract.

In its efforts to improve teaching conditions, the Board has engaged in employing teacher's aides. This is still in the development state. The Fact Finder believes that the Board should be given all the latitude possible in developing the concept of teacher's aides. For this reason the Fact Finder recommends that paragraph H of proposed Article VI be as proposed by the Board and therefore will recommend such proposal which is as follows:

> "Part time (and full time if necessary), non-teaching personnel shall be supplied for each school to assist with such duties as may be necessary. These duties shall include noon-hour and lunch supervision, milk and lunch money collection, recess duty and study hall supervision."

The above clause gives the Board latitude in developing the concept and it is believed that the Board should have this latitude.

The Association is suggesting that there be a limit as to the age of a teacher hired by the Board. It is up to the Board to determine the qualifications of a teacher consistent with state law. The Fact Finder believes it would be infringing upon the Board's ability to run the district in setting such an age limit. For these reason, the Fact Finder recommends that an age limit clause be not included in the contract.

The Association has asked that in regard to Article XIX, paragraph D that the mileage rate be 12 cents per mile. The Fact Finder believes that 10 cents per mile is competitive with other school districts and is consistent with the mileage rate being paid by the state to state officials who travel in pursuit of their duties. The Fact Finder recommends that the mileage rate be 10 cents per mile.

The Association raised the question of release time. The gist of the request was for preparation time for the elementary school teachers. Specifically the question of release time is governed by Article V. The parties have not been able to reach agreement as to paragraphs A, B, D, and F. After much probing, it was understood that the Board would be willing to provide forty (40) minutes a day preparation time for elementary school teachers in two twenty (20) minute periods and adjust the teaching day so that the teachers would be permitted to leave twenty (20) minutes after the close of the pupils' regular day. In view of this, the Fact Finder is recommending that paragraphs A, B, D, and F of Article V read as follows:

"A. No teacher shall be required to report for duty earlier than fifteen (15) minutes before the opening of pupils' regular school day in the morning. Teachers shall be permitted to leave twenty (20) minutes after the close of the pupils' regular day. Teachers are to be at their appointed work stations at least ten minutes before classes commence in the morning and also at noon if possible. Teachers are encouraged to remain for a sufficient period after the close of the pupils' school day to attend to those matters which properly require attention at that time, including consultations with parents when scheduled directly with the teacher, except that on Fridays or on days preceding holidays or vacations, the teachers day shall end at the close of the pupils' day.

B. The normal weekly teaching load in the junior and senior high school will be 30 teaching periods and five unassigned preparations periods or not to exceed an average of 25 hours of pupil contact per week. Assignment to a supervised study period shall be considered a teaching period for purposes of this Article. The normal teaching load in the elementary schools will be 30 teaching periods not to exceed 5 1/2 hours of pupil contact per day.

D. Elementary teachers will be provided two twenty (20) minute relief periods per day. Teachers on a reduced time schedule shall have twenty (20) minutes relief period per day from regular classroom duties. In addition, elementary teachers may use for preparation

all time during which their classes are receiving instruction from various teaching specialists.

F. In the event of any disagreement between the representative of the Board and the Association as to the need and desirability of such deviation from these norms, the parties shall negotiate said deviations."

The above recommendations give the elementary school teacher preparation time. It is still true that the teacher must remain in the classroom except on Fridays and days preceding holidays or vacations after the close of the pupils' regular day, but this is now reduced to twenty (20) minutes. The Fact Finder thinks this is fair because there is always work to be done. Furthermore, remaining after the pupils have left has been the past practice at Linden.

The Association also raises the question of release time for authorized representatives of the Association to conduct official business. The Fact Finder believes that paragraph D of Article II amply permits such release time and apparently has worked out satisfactorily in the past. Therefore, the Fact Finder recommends that paragraph D of Article II remain as is in the contract.

As to the question of release time for Association meetings, the Board has indicated that it is willing to permit monthly meetings commencing at the time that the pupils leave the school. The Fact Finder agrees that this is a fair proposition. Therefore, the Fact Finder recommends that there be a paragraph E added to Article II to read as follows"

"E. Once a month during the school year, the Association may conduct a business meeting on school premises commencing at any time following 3:10 p.m. in the afternoon."

Article IX dealing with absences or sick leave was also another matter for the Fact Finder. Specifically, paragraph B, D, and F of

Article IX dealing with absences were not agreed to. The Fact Finder believes that the present sick leave policy is satisfactory. It has worked in the past. There is no reason why it will not work in the future. The only amendment to the present sick leave policy that the Fact Finder would recommend is to increase the maximum sick leave accumulation from seventy (70) to eighty (80) days. Therefore, the Fact Finder recommends that paragraph B, D, and F of Article IX read as follows:

"B. All teachers of the Linden Community Schools will be credited with a ten-day sick leave allowance to be used for absences caused by personal illness or quarantine. The Board of Education may require a doctor's statement in writing.

At the end of each year, any unused portion of the ten (10) days shall become accumulative and may be used at some subsequent time. Maximum accumulation is eighty (80) days.

D. Teachers suffering injury, while in attendence at normal school work or school functions, which results in the loss of working days will not be subject to loss of sick leave time for said period.

F. It is the teacher's responsibility to file a signed statement certifying that he is eligible for "absence without loss of salary" and the reason for absence in the Superintendent's office. If this procedure is not followed, deductions from salary will be automatically made."

Finally, the question of a calendar was before the Fact Finder The calendar question was divided into two parts, namely, the question of institute days for the teachers plus the question of extending the card marking from a six (6) week to a ten (10) week period in the elementary and junior high schools.

The Fact Finder advised the parties to negotiate again on this point. They were not able to reach agreement on the extension of the card marking but were able to reach tentative agreement that January 23, 1970 and June 11, 1971 would be student attendence days so as to provide in each semester one institute day for the teachers. In the event

that the parties have not reached complete agreement on this point, it is the recommendation of this Fact Finder that the two (2) institute days be provided in this fashion. Furthermore, it is his recommendation that similarly during the school year 1970-1971 two institute days be provided, one in each semester by extending the student attendance days each semester.

As mentioned at the beginning of this report, it is recommended that this be a two (2) year contract. The Fact Finder sympathizes with the desires of the junior and elementary school teachers to have a ten (10) week marking period rather than a six (6) week marking period. However, it takes time to get the public accustomed to such a marking period and to make the necessary administrative changes. Therefore, the Fact Finder is recommending that the six (6) week marking period in the junior high school and the elementary school remain for the school year 1969-1970. However, he is recommending that for the school year 1970-1971 the marking period in the junior high school and elementary schools, as is already the case in the high school, be on a ten (10) week period.

The Fact Finder believes that the above Report covers all the issues raised. He again urges the parties to consider this Report and the Recommendations contained herein in their entirety and hopes that both parties can at least "reluctantly" accept the Report and its Recommendations and arrive at a collective bargaining agreement.

George T. Roumell, Jr.
Fact Finder

Dated: October 10, 1969

EXHIBIT I

SALARY SCHEDULE

EXPERIENCE	B.A.	B.A.+15	M.A.	11.A.+15
0	$7250	$7500	$7750	$8000
1	7540	7800	8060	8320
2	7842	8112	8382	8653
3	8156	8436	8617	8999
4	8482	8773	8962	9359
5	8767	9124	9320	9733
6	9117	9489	9693	10122
7	9482	9869	10081	10527
8	9861	10264	10484	10948
9	10255	10677	10903	11386
12	10655	11198	11339	11841

1. Six years' experience in other schools will be accepted with full credit on the schedule.

2. Adjustments in salary will be made on or before September 1st and March 1st after the teacher has presented evidence of having acquired sufficient semester hours to put the teacher into another pay bracket.

3. A substitute teacher, employed on a day-to-day basis, is paid at the rate of $23.00 per day. Regularly employed teachers when substituting within the system by appointment of the administration will be paid at the rate of $4.00 per class hour or $1.50 per module at the high school. No teacher shall be asked to substitute more than one clock hour in any given day unless absolutely necessary. After ten (10) consecutive days of teaching in the same room assignment, substitute teachers shall be paid at the rate of $28.00 per day for each day thereafter in the same room assignment.

EXHIBIT II

ARTICLE VII

PROFESSIONAL GRIEVANCE PREOCEDURE

A. All grievances shall be placed in writing and submitted to the building principal by the grievance committee or by the party or parties involved of the school in which the grievance arises. They shall name and be signed by the employees involved and shall contain a statement of facts upon which the grievance is based.

B. If the building principal is unable to resolve or satisfy the grievance within five (5) days, it shall pass to the Superintendent of Schools or his designee. If the Superintendent or his designee is unable to resolve the grievance withing ten (10) days, it shall then be passed on to the Board of Education of the District for a decision within twenty (20) days. These times may be extended by mutual consent. Both parties shall adhere to these time limits once the grievance procedure has begun.

C. If the decision of the Board is not satisfactory to the Association, the grievance may be submitted to arbitration before an impartial arbitrator selected by the parties in accordance with the rules of the American Arbitration Association in accord which rules shall likewise govern the Arbitration proceedings. The Board and the Association shall not be permitted to assert in such arbitration proceeding any ground or to rely on any evidence not previously disclosed to the other party. The arbitrator shall have no power to alter, add or subtract from the terms of this Agreement. Both parties agree to be bound by the award of the arbitrator.

D. The fees and expenses only of the arbitrator under this Article shall be jointly shared by the Linden Board of Education and the Linden Education Association. Any other expenses such as costs involved in presenting witnesses, etc., shall be borne by the party incurring such expenses.

E. For administrative convenience, the Board may cause complaints which may be subject of grievances under this Article first to be presented to a department head, assistant principal or other school employee, for informal processing, in an effort to reduce the number of formal grievances handled under the professional grievance procedure herein established. The parties shall mutually work out procedures for such informal processing upon request, but exhaustion of such informal procedures shall not be required as a condition precedent to invoking the grievance procedure, nor shall the participation of department heads, assistant principals or other employees in such informal procedures be deemed to be a supervisory or executive function.

F. The grievance procedure, herein outlined, affords the sole and exclusive remedy for complaints and grievances under the Agreement, and the sole method of expression or communication of a view, grievance, complaint, or opinion or any matter related to the conditions or compensation of public employment or their betterment.

G. Representatives of the Board and the Association will meet once each month for the purpose of reviewing the administration of the Contract, and to resolve problems that may arise. These meetings will be scheduled at a regular time and are not intended to bypass the grievance procedure. Each party agrees to exchange an agenda covering what both sides wish to discuss. Should mutual agreement on an Amendment to the Contract be reached by both sides, it shall be subjected to ratification by the Board and the Association.