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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION
FACT FINDING PROCEEDINGS

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
DETROIT OFFICE

In the Matter of:

LIVONIA BOARD OF EDUCATION,

and

LIVONIA EDUCATION ASSOCIATION

331
Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

REPORT AND RECOMMENDATIONS

Fact Finding Hearing Officer: James R. McCormick

For the Association: Robert G. Crumpton, Executive Director; James S. Carlson, Asst. Executive Director; Kenneth B. McClain, Chief Negotiator

For the Board: Keller, Thoma, McManus, Toppin & Schwarze, P.C.,
by Frederick B. Schwarze, Esq.

Joint Application for Fact Finding: October 18, 1973

Hearings Held: October 22, 23, 1973

Post-Hearing Briefs Received: November 2, 1973

Executive Session: November 5, 1973

Report Issued: November 30, 1973

I. INTRODUCTION:

Pursuant to impasse procedures provided in Section 25 of Act 176 of the Public Acts of 1939, as amended, Livonia Board of Education and Livonia Education Association jointly requested the appointment of the undersigned by the Michigan Employment Relations Commission to conduct hearings for the purpose of ascertaining the facts surrounding

Livonia Board of Education

certain issues in dispute. The undersigned, in accordance with nomination of the parties and appointment by the Employment Relations Commission, acting under authority of Act 176, held hearings on October 22 and 23, 1973, at which time the parties presented evidence and arguments in support of the reasonableness of their respective bargaining positions on the several unresolved issues relating to salaries, fringe benefits and working conditions.

Post-Hearing briefs were filed on November 2, 1973, supplementing the extensive documentary materials introduced into the record made at the hearing. By agreement made at the hearing, an extraordinary executive session, attended by principal representatives of the parties, was conducted on November 5, 1973, at which time the undersigned outlined his tentative findings and conclusions and gave the parties' representatives a further opportunity to debate the merits of alternative solutions to the bargaining impasse. In the opinion of the undersigned this post-hearing meeting, perhaps novel in fact finding proceedings but well-tested in statutory interest arbitration proceedings under Act 312, P.A. 1970, has aided considerably in the quest for a balanced and thorough understanding of the issues and in their just and practical resolution.

The joint request for fact finding followed circuit court proceedings in which the Board sought an injunction against a withholding of services by the professional employees represented by the Association. One of the issues raised by the Board at the fact finding hearing was its demand for a docking of pay as a result of the reduction of the school year from 187 to 184 days. The reduction, in turn, flows from the loss of class days during the strike. The Association is adamantly opposed to the very notion of forfeiting any pay as a result of the strike, but indications from nearby contract settlements, following strikes, are that the halcyon days of teacher strikes without

economic consequences are behind us. Nevertheless, in the interest of resolving this impasse and avoiding opening old wounds, the undersigned will not recommend any deduction from the annual salaries as a result of the reduced length of the work year from 187 to 184 days. According to the record, Circuit Judge Moynihan on September 17, 1973 deferred a ruling on the Board's petition for an injunction, proposed fact finding proceedings, retained jurisdiction in the case, and directed the parties to bring the matter on again before the Court subsequent to completion of fact finding hearings and receipt of a Report and Recommendations in this case. The teachers represented by the Association returned to their normal professional duties at that time and have continued to work without a contract while these proceedings have been pending.

II. THE ISSUES:

A number of economic items of major significance remain to be resolved between the Board and the Association. Both parties tend to favor a two year agreement, and the undersigned will recommend a two year package. The negotiations ensued in the Spring of 1973 and continued intermittently until the beginning of the ordinary school year in September, 1973. A number of issues were resolved but basic questions such as salary schedules, cost of living, hospital-medical insurance, remain unresolved. Additionally, a number of non-economic issues must be disposed of before the parties can enter into a contract. On September 10, 1973 the Professional Negotiations Committee of the Association recommended to the membership a settlement of all issues as tentatively agreed to with the Board. The membership overwhelmingly rejected that tentative agreement despite the recommendations of the Committee. The substance of that tentative agreement is set forth as follows in Association exhibit No. 96:

"Salary Schedule (1973-74)

	<u>BA</u>	<u>MA</u>
0	\$8,800	\$9,700
1	9,420	10,424
2	10,040	11,148
3	10,660	11,872
4	11,280	12,596
5	11,900	13,320
6	12,520	14,044
7	13,140	14,768
8	13,760	15,492
9	14,380	16,216
10	15,000	17,700

1974-75

Minimum of 3% - Max 6%

Both years: No change in BA,MA plus hours sections or B & C schedules

A. Teachers at or who, under prior agreement, would have been appointed to Level II BA status (Steps 4,5,6,7,8,9) will be paid an additional \$266 for the 1973-1974 school year. These teachers will assume regular status under the above wage schedule for the 1974-75 school year.

C. 1974-1975 salary schedule will be adjusted, based upon the percentage change in the cost of living between the June, 1973 and the June, 1974 index as defined under the National Average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the Bureau of Labor Statistics, U.S. Department of Labor (calculated on 1967=100), with a maximum change of six (6%) per cent and a minimum change of three (3%) per cent.

3. Full payment of MESSA Super-med premiums.

4. Conditions applicable for the Second Year (1974-75)

Contingent upon Renewal & Added Millage:

Board agrees to reduce class size allocations k-12 by two (2) children,

Restore the Extra Duty program represented in Schedule B; consider improvement by mutual agreement.

(Salary not contingent on millage passage or renewal)

5. Board offer calls for reduction in secondary of released time for department chairmen (allocate .2 teacher per 1000 in high school; 3 teacher per 1000 in junior high school.

Reduce time bank from 2 per teacher to 1 day per teacher for both years.

6. Calls for no change in current longevity payment; allows payment of severance pay to be spread over one or two years to increase annual retirement salary average.

7. Contract language agreed upon to date will be printed and distributed as soon as possible."

The formal positions taken by the respective parties in the Fact Finding hearing differ substantially from the terms tentatively agreed to in September. The Board contends that the amount of funds available for improvements in teacher salaries and fringe benefits is substantially less than was believed to be the case in September. The

Association, on the other hand, seeks more in terms of salary and fringe benefits than its committee tentatively agreed to in September. Non-economic issues, principally that of grievance arbitration, are also unresolved at this time. The issues as to which evidence was presented before the undersigned include the basic salary schedule, the number of steps in the salary schedule, longevity for teachers with the Bachelors Degree, cost of living allowance, additional pay for academic credits beyond the Bachelors or Masters degree, schedules B & C, restoration of reduced programs, Board payment of the final 10% of medical insurance premiums, the selection of the medical insurance carrier, binding arbitration of unresolved contractual grievances, class size, teacher leadership and time bank clauses, as well as some minor related questions.

The Livonia School District is approximately 40 square miles in area with a 1972 population estimated at 110,000, including 37,000 public school students . During the 15 year period between 1955 and 1970 the Livonia Public Schools passed through a period of extremely rapid growth from approximately 7,000 to approximately 38,000 students. A peak enrollment was reached in 1971-72 of nearly 39,000 students in grades K - 12. During the last several years the District has been characterized financially by chronic deficits . As of the end of the 1972-73 school year there existed a deficit of approximately \$950,000. The District is under orders from the Michigan Department of Education to make substantial payments toward the elimination of this accrued deficit. Accordingly, the Board has budgeted \$200,000 this year as a payment on the deficit. The Board has prepared a balanced budget which would not allow the professional employees represented by the Association to receive salaries or fringe benefit increases comparable to those offered and rejected in September. This apparent withdrawal

on the part of the Board from concessions previously made is unusual but is at least partially justified by the economic facts of life as presented to the undersigned at the hearing. It should be pointed out that the Association has also taken a more militant stance in the Fact Finding hearing than was represented by its September tentative agreement. The case is unusual in this regard and the undersigned has given careful and hopefully sensitive consideration to the unusual circumstances preceding the hearing.

Before proceeding into the details of this complex dispute, it is only fair to state, for the benefit of those not familiar with collective bargaining, that there is no clearly defined right and wrong when it comes to bargaining disputes involving economic issues. Such disputes tend to be resolved more by a realistic assessment of the economic power of the opposite side than by theoretical economics. Nevertheless, the public interest in resolving public sector labor disputes has prompted the legislature to create a Fact Finding procedure in the hope that the application of experience and common sense by a neutral fact finder will throw light on the real issues and lead to a resolution which accommodates the essential requirements of all parties. Charles O. Gregory, Labor and the Law (2nd ed.; New York: W.W. Norton & Co, Inc. 1961), page 478 states that economic evidence, regardless of how formally and scientifically it is prepared and presented at the hearing, serves to give some facts to be considered but furnishes "only the roughest of guides". Elkouri & Elkouri, How Arbitration Works (Washington, D.C.: Bureau of National Affairs, Inc., 1960) pages 442-485 takes a more positive position regarding the possibility of analyzing an economic bargaining dispute through the application of specific criteria. These would include the prevailing practices, cost of living,

ability to pay, and the public interest.^{1/} The undersigned has applied all of these factors to this case and has reached conclusions with respect to the terms of a contract which would be fair and just under all the circumstances to both the teachers and the public as represented by the Board of Education. I have kept the discussion of my rationale to a bare minimum because to do otherwise plunges one into a sea of specious logic and self-serving deductions.

"Perhaps one of the reasons why judges do not like to discuss questions of policy, or to put decisions in terms upon their views as lawmakers, is that the moment you leave the path of merely logical deduction you lose the illusion of certainty which makes legal reasoning seem like mathematics. But the certainty is only an illusion, nevertheless." O.W. Holmes, Collected Legal Papers, p. 126, quoted in The Search for a Usable Past, and Other Essays in Historiography, H.S. Commager, New York, Alfred A. Knopf, Inc., 1967, page 32, f.n. 5. (emphasis added)

III. FINDINGS OF FACT:

The September economic package which was overwhelmingly rejected by the teachers and from which the Board now seeks to extricate itself, involved an expenditure of \$587,000 of "new money". The Board's position now is that there is only \$403,000 available for improvements over and above the 1972-1973 agreement with the Association. Accordingly, the Board proposes eliminating a \$75,000 item referred to by the parties as the "hump" at level 2. This involved a special payment to teachers in the middle years of the Bachelors salary schedule for 1973-74 designed to eliminate certain inequities to people at these pay grades. It was essentially designed as a one year expedient to make the package more salable to the teachers as well as to correct an apparent inequity. The

^{1/} The viability of interest arbitration in the public sector (which is akin to fact finding as it relates to the possibility of objectively measuring the facts) is assessed by Dr. Craig E. Overton in an article written for the Arbitration Journal, September, 1973, entitled "Criteria in Grievance and Interest Arbitration in the Public Sector."

Board would also eliminate the payment of the final 10% of medical insurance premiums, a move which would save another \$66,000 for this year. The Association seeks certain longevity payments for teachers with the Bachelors Degree, an item which would cost \$13,000 this school year. After an intensive analysis of the facts and figures presented by the parties the undersigned has concluded that a balanced budget could be achieved without eliminating the level 2 "hump" which I deem to be necessary in order to obtain acceptance by the membership of the Association.

The Board maintains that there is \$524,000 in new money available for all 5 employee bargaining units, after a payment of \$200,000 on the accumulated deficit. Since teacher salaries have in the past constituted approximately 77% of all salaries paid to all bargaining units, the Board calculates that \$403,000 of the total \$524,000 is the just proportion of the available money which should be expended on improvements in teacher salaries and fringe benefits. In addition to the \$200,000 on the deficit, the Board budget also contemplates expenditures for books and supplies and improvements in the physical plant considerably larger than the amounts budgeted for these activities in the last few years. While the Board effectively argues for the need to devote more money to these items, it is the conclusion of the undersigned that the Board must make sacrifices in these areas in order to maintain a comparable salary structure. This can be done. First of all, it is my conclusion that the payment on the deficit should be \$100,000 rather than the budgeted \$200,000. In addition, a savings of \$150,000 could be achieved by modest reduction in the budgeted figures for text books, school supplies, building repairs and related items, without jeopardizing any of these programs in the immediate future. Such budget cuts will hurt the program but are unavoidable if the District is going to treat its employees justly. The resulting saving of

\$100,000 and \$150,000 would increase the amount available for all five bargaining units from \$524,000 to \$774,000. 77% of that figure produces \$596,000 available for Association contract improvements. The September economic package, including Board assumption of the final 10% of the hospital medical insurance premiums (an item costing \$66,000) comes to \$654,000. If the teachers continue to pay the final 10% of these premiums for this school year the resulting savings to the Board (\$66,000) would leave \$588,000 as the cost of improvements in the Association economic package. It is my finding that a fair and reasonable solution to the economic impasse should involve essentially the payment of the September settlement but with the final 10% of the insurance premiums paid by the teachers themselves. In the interest of fair play to the teachers with long tenure at the Bachelor level , and also in the interest of making the package more attractive to them in terms of ratification, it is my finding that the Association's proposal for Bachelor Degree longevity, costing \$13,000, should be granted. This would result in approximately \$601,000 in improvements in the package. This would cost only \$5,000 more than would be available for teacher contract improvements were the Board to make the budget adjustments recommended above. A very minor reduction in other budget areas would make the final \$5,000 available and allow for a balanced budget.

While these figures can be attacked, particularly in light of the ever-present uncertainties in an inflationary economy, they are essentially reliable and are based upon calculations made by the Board's own representatives at the hearing and in written documents submitted to the undersigned. An alternative would be to eliminate the level 2 "hump" instead of the final 10% of insurance premiums. This would reduce the package by some \$9,000. However, it is my finding that a better economic settlement and one with greater acceptability would involve retaining the level 2 "hump" on a one year basis and deferring the final

10% insurance premium benefit until the second year of a two year contract.

With respect to the second year of the contract, it is my finding that the final 10% on the medical insurance premiums should be absorbed by the Board at that time and that the essential salary increases should be geared to the increases in the cost of living. The parties discussed a number of alternative forms of cost of living allowance for either the first or second year of a contract. In my opinion the increases contemplated by the September tentative agreement as modified in my above findings, put these teachers on a par with comparable districts and require no further cost of living allowance adjustment applicable to the 1973-74 school year. With respect to the 74-75 school year it is my finding that the most fair and reasonable contract settlement would involve a provision whereby the salary schedule would be increased at every step in accordance with the annual percentage increase in the cost of living between July, 1973 and July, 1974. While the Board has favored setting a minimum of 3% and a maximum of 6% on these cost of living increases for the second year of the contract, it is my finding that equity to the teachers requires something different. On the basis of the entire record and my understanding of the economy as it exists today I believe that the cost of living percentage increase for the second year of the contract ought to contain no upper lid but should contain a built-in minimum increase of 2%. The latter figure has already been exceeded significantly during the last few months. With respect to the lid or upper limit, I find no rational justification for requiring the teachers to accept in advance a second year package which might be less than the actual cost of living increases during the intervening 12 month period.

The total millage rate paid by the property tax payers in the Livonia School District is not high by contemporary standards in Southeastern Michigan. A pinch in the pocketbook has been created by increases

in the State equalized valuation of property in the area along with a decrease in the total pupil count and the new state aid formula. Nevertheless, salaries must keep up with the cost of living and be competitive with surrounding districts if a reasonable level of quality instruction is to be maintained. The Board needs more millage to restore programs which have been abandoned and in order to reduce the pupil-teacher ratio of 30 to 1 down to a ratio of 28 to 1. This cannot be done at the present time without throwing the budget out of balance, but the Fact Finder is forced to the conclusion that the responsible taxpayers of the District must allow the millage to be increased in order to restore programs and reduce the pupil-teacher ratio in advance of the 1974-75 school year. An increase of one mil in the tax levy produces approximately \$1,000,000 in revenue in Livonia. In the event the taxpayers of the District are unwilling to increase their millage by at least one mil they will have brought upon themselves a very unfavorable situation.

The settlement advocated by the undersigned would permit the Board to add another step in the Bachelor schedule, something not in the interests of the teachers financially, but nevertheless necessary for a balanced budget.

Schedules B and C relate to payment to coaches and other teachers engaged in extra curricular activities. Although improvements are warranted by the facts, I do not recommend their inclusion in this contract because of the necessity of producing a balanced budget. The present payment schedule for these activities is not so grossly unfair as to justify reductions in other programs in order to free up the necessary money. It is however an area which will undoubtedly require improvements the next time the contract is negotiated. The same comments are applicable to the Association requests for improvements in the salary schedule as it relates to credit hours in excess of earned

degrees. Eventually there must be improvements in this area also and this constitutes another argument in favor of a modest millage increase next year.

Both parties agree that the calendar should consist of 182 class days and 184 total working days. Accordingly, there is no need for findings and recommendations in this area. The September tentative agreement provided for reductions in benefits described by the parties as "time bank and leadership". These reductions should be made a part of the contract. As noted above, the economic settlement recommended by the undersigned will require some reductions in money budgeted for teacher supplies, text book purchases, proposed building repairs etc.. I note however that a building owned by the School District has been sold since the hearings in this matter, resulting in a somewhat unexpected source of revenue, which may alleviate the necessity of substantial cuts in these other budetary items.

Two non-economic items require some discussion. The first concerns the position of the Board that it should be given the option to switch from MESSA hospital-medical insurance to another carrier, probably Blue Cross. The September tentative agreement did not provide for a change of carriers and, considering the sensitivity of this issue and the lateness of the hour for making a change, I strongly recommend that MESSA be retained at least for the life of this two year contract. Permission for the Board to change carriers would create a chaotic situation unless there were an advance opportunity to assure that the identical benefits available through MESSA would be available through the new carrier. There is no opportunity for negotiations along this line at this point and the idea of changing carrier should be abandoned by the Board for the time being.

The other principal non-economic issue concerns the demand of the Association for grievance arbitration. Considering that there

is little money in this budget for economic improvements during the life of this contract, it seems to make collective bargaining sense to grant the significant non-economic demand for grievance arbitration. Such a finding and recommendation coming from an active labor arbitrator is of course suspect as being self-serving. Nevertheless, there is no shortage of documentation available to substantiate that nearly all collective bargaining agreements in the private sector and a growing majority in the public sector provide for binding arbitration as the final measure for resolving disputes concerning the interpretation and application of the collective bargaining contract. The alternative of leaving the final decision in the hands of the employer itself constitutes a deadend as far as collective bargaining is concerned. The other alternative of permitting an aggrieved party to sue in the circuit court for breach of contract is only slightly more effective since the cost and time factor would make it impractical to pursue any but the most significant case. The costs of grievance arbitration are not negligible and do serve to promote settlements between the parties themselves. However, these costs are not so great as to stifle efforts to enforce the contract, as is the case if the only relief is available through the judicial system. The typical grievance does not involve a sufficient amount of money to justify a law suit.


It is unrealistic to suppose that a collective bargaining agreement can be harmoniously administered over a long period of time without grievance arbitration. This is certainly true where the unit involves approximately 1,500 articulate professionals and very complex provisions governing a myriad of working conditions. I am, however, impressed that there is some merit to the argument of the Board that the discharge or refusal to rehire probationary teachers, subjects apparently covered by the grievance procedure, should be

excluded from arbitration. Under the circumstances of this case it is also found that arbitration should not be available in the event of the involuntary termination of tenure teachers unless, for procedural reasons, the tenure teacher has no access to review by the State Tenure Commission.

IV. RECOMMENDATIONS:

It is recommended that the parties return immediately to the bargaining table and reach agreement on all outstanding issues in substantial accordance with the findings and recommendations set forth in detail above.

Respectively submitted,


James R. McCormick, Fact Finding
Hearing Officer