

5/30/93
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In the Matter of Fact Finding
Between:

MERC No. D90 H-1339

LIVONIA PUBLIC SCHOOLS

-and-

MICHIGAN AFSCME, COUNCIL 25

REPORT

and

RECOMMENDATIONS

Samuel S. Shaw, Fact-Finder

Hearing

Livonia, Michigan
March 2 and March 3, 1993

* * * * *

Appearances

For the School Board

For the Union

Gary P. King, Attorney

Michael J. Bommarito, Attorney

Witnesses

Jack E. Kirksey
Michael G. Furlong
Samuel P. LaMonica

Delia Divito

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Livonia Public Schools

Pursuant to a petition filed with the State of Michigan's Employment Relations Commission, in a notice dated December 8, 1992, the undersigned was appointed as fact-finder in the instant matter between the Livonia Public Schools (hereinafter referred to as the "District"), and the Michigan Association of State, County, and Municipal Employees, Council 25, (hereinafter referred to as the "Union").

Facts and Background

The Livonia Public Schools School District is a third-class Michigan School District covering thirty-nine square miles in the city of Livonia and a small portion in the city of Westland. It operates thirty-four schools or centers serving approximately 16,500 students.

A Department of the District is Community Education Services. This Department is divided into four divisions: Enrichment and Leisure Time Programs; Early Childhood Programs; Special Programs; and Adult Education and Community Education Programs. Only the Early Childhood Division is involved in this case.

The Early Childhood Division offers five separate

programs: Child Care Program; Pre-School Enrichment Program; School Age Child Care Program ("SACC" or "Latchkey"); Headstart; and Parent Readiness Education Program. With the exception of this last program, each of the programs is directed to the care and education of children; Child Care, Pre-School Enrichment, and Headstart for pre-school age children, and SACC or Latchkey for K-6 children before and after school.

Each of the four Programs involving children is headed by a Supervising Teacher who directs Instructors who are individually responsible for educational services, lesson plans, discipline, and parental contacts. Assisting these Instructors are Adult Helpers or Assistant Instructors, a group of seventy-two persons who constitute the subject Bargaining Unit. These Adult Helpers assist the Instructors in preparing activities for the children, participating in classroom activities, generally caring for the children's health and safety needs such as diaper changing, helping with clothing, washing up, etc., and cleaning up the classroom at the conclusion of the day's activities.

At the end of August, 1990 the ASFCME Michigan Council 25 was recognized by the State of Michigan as the exclusive bargaining agent for this Bargaining Unit which was

officially described as:

ALL NON-INSTRUCTIONAL EMPLOYEES IN THE COMMUNITY EDUCATION DEPARTMENT OF THE LIVONIA PUBLIC SCHOOLS INCLUDING, LATCHKEY, PRIMARY CARE GIVERS, excluding instructional employees and supervisors. And all employees who work less than one hour per day or five hours per week.

The District and the new Bargaining Unit held a number of collective bargaining meetings, and reached tentative agreements on the majority of issues. However, despite a substantial number of meetings, many of which involved mediation, as of mid-August 1992, there were still six issues that had not been resolved. Consequently, the Union filed a petition with the Michigan Employment Relations Commission for fact-finding.

The Fact-Finding hearings were held in the Livonia Public Schools Administration Offices in Livonia, Michigan on March 2nd and 3rd 1993 before Samuel S. Shaw, appointed by MERC as Fact-Finder.

The District was represented by Attorney Gary P. King and the Union by Attorney Michael J. Bommarito. Both were given full and ample opportunity to present all relevant oral and documentary evidence and to offer arguments in support of their respective positions. Both Parties waived the use

of a court reporter; however, the proceedings were tape recorded by the Fact-Finder.

Upon conclusion of the oral hearing it was mutually agreed that post-hearing briefs would be filed, to be mailed to the Fact-Finder, postmarked as of April 19, 1993. As both Briefs were received, postmarked as agreed, the Hearing was officially closed upon their receipt, or April 21, 1993.

The Issues

It was mutually stipulated the following were the issues still unresolved and for the Fact-Finder's consideration and recommendation:

1. Wages
 2. Out-of-Class or Fill-In Pay
 3. Paid Sick Leave
 4. Paid Holidays
 5. Health Insurance
 6. Arbitration.
-

Discussion and Conclusions

Despite a pre-hearing suggestion, the Parties could not reach agreement as to what constituted an appropriate

comparable. Therefore, before the submitted comparables can be considered as appropriate guidelines, it has to be determined whether or not these comparables are reasonably compatible with the operation and organizational structure at Lavonia.

A review of the "comparable" lists submitted by the Parties indicated they both contain elements that raise legitimate questions as to their suitability and criteria against which the issues in question can be compared.

As the District contended, there is no question its child care programs are primarily in competition with local private day care centers. However, as pointed out by the Union, these private centers, being "for profit" operations, have to operate on a different financial basis than the District. Although the District's accounting procedures were not discussed, it is reasonable to presume that such items as light, heat, rent, taxes, etc., are not charged as overhead against the Programs, an advantage not enjoyed by the private centers.

In addition, all of the private centers noted were apparently considerably smaller in the number of children they serviced.

With respect to the Union's list of public schools, it is apparent there are few, if any, that operate on a level equal to that of Livonia. Of those referenced, from the standpoint of child care programs, all service a much smaller number of children, employ fewer teachers or instructors, and three of the submitted ten were in districts a substantial distance from Livonia. These cannot be considered true comparables inasmuch as these districts have entirely different economic climates than Livonia.

Notwithstanding the above discussed questionable elements, however, the submitted comparables are accepted, but with reservations.

The Issues

Of the seven unresolved issues, with the exception of the question of grievance arbitration, all are economic. The non-economic issue of arbitration is, therefore, covered first, followed by the economic issues. However, the issue of wages, being the most involved, is covered last.

Non-Economic Issues

Grievance Arbitration

The only objection offered by the District to the Union's request for an arbitration provision, was that it should not be granted because this was the first labor agreement between the Parties. The District claimed that although many of its bargaining unit contracts now included an arbitration provision, this was a "benefit" that had never been granted for a first contract.

As this "first contract" argument was the only reason given by the District for excluding an arbitration provision, I am not satisfied it is sufficient to outweigh the commonly accepted advantages inherent in the use of arbitration.

For example, an arbitration provision, coupled with a no strike clause, makes it possible to maintain the direction of a business uninterrupted by labor stoppages.

Furthermore, it is generally recognized that arbitration can provide a forum where an aggrieved has his or her day in court, or as has often been said, "a place where the grievant

can be freely heard, and the air cleared." Without such a final forum, although a grievance procedure would most likely be included, its final step would only be an appeal to management. In other words, there would be no objective final decision - at all steps management would be both judge and jury .

Consequently, as the Parties have been unsuccessful in reaching an agreement, despite approximately two years of meetings and effort, I believe that when a final Agreement is reached, despite the fact it will be the first between the Parties, an arbitration provision would serve in providing a smooth introduction, but of even more importance, a forum for continued understanding.

Recommendation

For the reasons discussed, and because I believe such a labor relations tool would be a "benefit" to both Parties, it is recommended the arbitration provisions as proposed by the Union be accepted and included in the subject Agreement.

Economic Issues

Out Of Class Pay.

In this issue the Union asked that members of the Bargaining Unit (Adult Helpers) be paid 75% of an instructors wages rate when assigned to the supervision of a classroom, as a substitute for an instructor absent for two or more hours.

It was the District's position that no evidence was presented to suggest that Adult Helpers at Livonia were ever called upon to "fill in" for instructors. Furthermore, no evidence was offered that any of the Union's comparables provided such a benefit and, except when the Adult Helper was a certified teacher, it was not provided by any of the District's comparables..

I am not unmindful there is no specific evidence relative to the status of "out-of-class" pay at any of the comparables submitted by the District, or those submitted by the Union. However, in part because benefits provided by one district do not necessarily have to conform or be equaled by those provided by another, an equitable recommendation on this issue has to rest on what is believed would be considered fair and reasonable to a fair-minded person.

Although it may be argued the granting of "out-of-class" pay is practically non-existent in the public school sector, I believe it is generally accepted that for years it has been widely provided in the private sector.

Undoubtedly several reasons could be advanced for this difference, nevertheless, none would change the fact that as a job's wage rate is based in direct proportion to its responsibilities, when an employee assumes these higher responsibilities they also receive the higher wage. Irrespective of the industry involved, I believe most people would consider this practice only fair and reasonable, particularly as the vast majority of these advancements, permanent and temporary alike, are for the convenience of and at the request of management.

Another factor that should not be entirely ignored, is that the absence of a contractual provision such as that in question might be construed as the tacit approval for the regular use of Helpers as substitutes, regardless of the need.

Finally, even if this provision was to be included in the forthcoming Agreement, according to the District the Bargaining Unit members "are not called upon to 'fill-in'

"for instructors" it is unlikely this discussed benefit would have a negative impact on either the District's operational procedures or its financial burden.

Recommendation

For the reasons discussed herein, and because I feel the provision under discussion is both fair and reasonable, but basically because I believe a person is entitled to be remunerated in proportion to the responsibility they have been asked to assume, I am recommending an "out-of-class" pay provision be included in the forthcoming Agreement.

However, an out-of-class pay of seventy-five percent of an instructor's wage rate presumes the substitute is required and able to assume seventy-five percent of the instructor's duties. However, the evidence suggests that when an Adult Helper is required to fill-in for an instructor, her responsibility is limited primarily to supervision. Therefore, it is further recommended the out-of-class pay be limited to fifty percent (50%) of an instructor's wage rate.

Paid Holidays

Currently, the members of the subject Bargaining Unit do not receive paid holidays, and the District proposed one paid holiday to become effective in the 1993-94 school year. The Union requested two paid holidays in 1993-94, with an addition of one more, effective July 1, 1994.

I agree in part, and as far as it goes, with the District's claim that its proposal was "more in line" than was the Union's with all the submitted comparables. Although not labeled "comparables" by either Party, both submitted as exhibits, labor agreements currently in effect between the District and several bargaining units. A review of the pertinent part of two of these Agreements does not support the District's claim.

The ASFCME Local 118 contract, which covers a variety of skilled and semi-skilled classifications, provides ten paid holidays to employees with ten months employment. The Agreement covering the District's Paraprofessionals grants ten paid holidays, not only for thirty-hour per week regulars, but also for "regular part-time", working only three hours per day, or fifteen hours per week.

I am not suggesting the labor contracts of the Paraprofessionals and Local 118 should establish a criteria for determining the justifiable number of paid holidays for Adult Helpers. However, they do indicate the Livonia Public School District's non-professional employee bargaining unit paid holiday level, and although not a "comparable" as such, provides a useful guide.

The subject group of Adult Helpers are referred to as "part-time" employees, but it appears from the record that although some are part-time, (6 hours per day, 5 days per week), some are full-time, working a fifty-week year, thirty-five or forty hours per week. It also appears that thirty hours or more per week is considered "full-time."

It is generally accepted that regular full-time employees should receive a greater number of paid holidays than part-timers. Therefore, after reviewing both Parties' proposals, it is my conclusion that considering the current employee paid holiday level in the Livonia Public School District, and as the Adult Helper in question are bona fide employees of the District, fairness requires that full-time employees should have at least two paid holidays, and part-time employees should have at least one.

As this is an initial labor agreement between the District and the subject Unit, I feel this paid holiday level should remain unchanged for the life of the Agreement, or until it is changed through subsequent negotiations at the bargaining table.

Recommendations

For the reasons discussed herein, it is recommended that upon completion of six months employment, regular full-time employees be granted two paid holidays per calendar year, and regular part-time employees, one paid holiday per calendar year.

Paid Sick Days

The District proposed the current number of sick days be increased by one, and the Union requested it be increased by four.

I agree the increase proposed by the District would provide a more generous program than provided by any of the private day care centers introduced as comparables. However, as I noted previously, I have reservations as to the degree of weight that can be properly applied to these relatively small private companies.

It is my understanding that generally paid sick days are not provided because of the level of job duties or responsibilities, but to provide against an income loss resulting from illness. Since such a loss impacts employees at all levels, it would be difficult to rationalize a conclusion that one group of employees was any more deserving than another. Therefore, although only offered as exhibits, the paid sick day provisions for Livonia's Paraprofessionals and Local 118 must be given some recognition.

I am not suggesting that at this time the number of paid sick days for Adult Helpers be raised to match either of

the above units. If and when such a step is to be considered, I believe the end results would be more acceptable if they were reached through negotiations rather than through fact-finding.

The Unit at issue has generally been referred to as a "part-time bargaining unit", and admittedly, according to the record many of the members are scheduled for six or less hours per day and only through the school year. However, a substantial number work a schedule of eight hours a day over a full year, a schedule that can hardly be defined as part-time.

I am aware that Adult Helpers are just as vulnerable to periodic illness as anyone else, and a sick-day-off provision is not an unreasonable request. Moreover, even though the Parties do not agree as to the amount of entitlement, both recognize the reasonableness of this proposal

In considering the question as to what would constitute a fair and reasonable provision, it cannot be ignored that although a significant number of unit members are full-time, an even larger group of the membership works less than a full schedule, both within a week and within a year. Consequently,

a question cannot be avoided as to the amount of paid sick days to which they would justifiably be entitled.

I cannot deny my thinking may be somewhat arbitrary, but considering the prevailing conditions, it is my conclusion the District's proposal was on the high side, while the Union's was on the low.

Recommendations

For the reasons set forth in this discussion, it is my recommendation that based upon the current seniority requirements, a sick day provision of three (3) and five (5) be included into the new Agreement. Sick days not used may be cashed in at the end of each year at the current wage rate of the holder. Days not cashed may be banked for a maximum period of two years.

Health Insurance

In this issue the Union requested full paid hospitalization for each member who worked at least twenty hours per week and was not "otherwise eligible for hospitalization coverage under another plan." The District's offer was to provide the employees defined as eligible in the above, with group rates for hospitalization, but "with the employees paying the premiums."

Notwithstanding the merit in the District's claim that the cost of the proposal put forth by the Union would be "prohibitive", I have some difficulty reconciling this very strong negative argument with the fact that with the exception of the Unit at issue, the labor agreements submitted as Exhibits indicate the District currently pays one hundred percent of hospital plus medical insurance premiums for all its other employees.

(i.e. Administrators & Supervisors. [LEADS]; Supervisory Employees [SEALS]; Paraprofessionals; ASFCME, Local 118; and the Livonia Education Association.)

I appreciate these contracts were negotiated in 1989, '90 and '91, however, although full health insurance premiums may not have been as costly as they are today, even when these agreements were negotiated they were recognized as one

of the more expensive benefits.

It cannot be disputed that fully paid health care premiums are a high cost benefit. Nevertheless, considering that the District assumes this full cost for practically all its employees, it cannot help but raise the question as to the justification for its negative position when considering the "hospitalization only" request made by Adult Helpers.

Granted, the full payment of hospitalization insurance premiums would not be an inexpensive benefit, and it cannot be disputed the reduction in subsidies, plus the somewhat depressed economic climate has required all Michigan school districts to be very prudent in accepting any additional costs. However, despite the District's apparant current financial situation, I am not convinced it is sufficient to justify dismissing the Unit's request in its entirety.

I acknowledge the District's notation that between the last negotiation session and fact-finding the Union changed the content of its health care proposal. However, whether it constituted "regressive bargaining" is questionable, as the May, 1992 proposal included both hospital and medical coverage, while the present one is limited to hospitalization. In any event, although I agree the submission

of a revised proposal is quite unusual, and would be disallowed in a 312 matter. I agree it raises questions as to the reason(s) that prompted the change, but would not justify a dismissal action in a matter of fact-finding.

As I have previously suggested, when considering a fair and reasonable recommendation in this question, I am disturbed by the obvious discrepancy between the health care insurance benefits provided practically all of the other Livonia School employees, and the almost zero proposal offered to the Adult Helpers.

Recommendation

In view of the prevailing situation as discussed herein, in the matter of health care, I am recommending the following:

Hospitalization insurance premiums to be paid for in full by the District, for regular full-time Unit employees not eligible for any other health care insurance program.

A fifty percent (50%) co-pay arrangement for hospitalization insurance premiums be made available for regular part-time Unit employees otherwise not eligible for any other health care insurance program.

The Parties to determine mutually acceptable definitions of "regular full-time" and regular part-time" employees.

Wages

This final and last issue is probably the most controversial of all the submitted issues. It is even more so in this case, inasmuch as the presented comparables have weaknesses that raise a question of their weight as determinative standards for fair and reasonable wage levels.

Also is the question of finances, a question somewhat compounded by the possibility of some financial relief if Proposal A is passed, or made more difficult if Proposal A is rejected.

I am aware that depending on length of service, the current wage rate for Adult Helpers varies from \$5.20 to \$5.60 per hour; without question a very low pay rate for the work required. I also understand that for the period of the past five years the only wage increase received by this group was a 20¢ per hour increase in 1990, despite the fact that according to the record, the majority of employee units in the Livonia School District received substantially greater wage increases.

Nevertheless, although I understand the Union's concern over what they probably consider an unacceptably low hourly

wage, an analysis of the Union's last proposal on this issue could reasonably create the impression that when the proposal was finalized, the District's financial status was given little, if any, consideration.

On the other hand, although I do not question the District's claim, that as most other school districts it is forced to operate on a very tight budget, and consequently, any increase in the cost of labor is a matter of concern. Considering the pay increases given management, and the wage increase agreements made with collective bargaining units within the past few years, one cannot help but wonder if the District's financial situation is as critical as claimed.

Turning to the question of what would constitute a fair and reasonable wage level for Adult Helpers, as criterions the comparables are not particularly helpful. Although it may be presumed the duties of the various comparables are approximately the same as those performed by Livonia Adult Helpers, it is strictly a presumption and, therefore, not the best basis of a wage comparison. Justification for this skepticism becomes apparent when it is considered that of the private sector comparables, four have a starting rate of only the minimum hourly wage, and four more with only 25¢ more

than this minimum.

Of the nine comparables submitted by the Union, one is as high as \$8.14 per hour and one is as low as \$5.35. It is difficult to believe this listing comprises identical jobs when the wage rate encompasses this wide a spread.

Insofar as the present rate for the Livonia Adult Helpers is concerned, I am in full agreement that considering the caliber of performance expected of Adult Helper, their current hourly rate is unquestionably low by any standard. Moreover, coupled with the cost-of-living increase over the past five years, it has to be recognized at this time as untenable.

As I previously indicated, I agree there are some indications that might suggest the District's claim that its current financial condition was critical may have been slightly over stated; nevertheless, absent any hard evidence to the contrary, I have to take into account the strong argument advanced as to the District's financial state.

Therefore, it is with these various conditions in mind that I make the following recommendation;

Recommendation

1. A three (3) year Contract.
2. A twenty-five cent (25¢) signing bonus
This to be a bonus item only - not to be considered
as an addition to the hourly rate.
3. A ten percent (10%) increase at each step of the wage
scale - effective with the signing of this Agreement
continuing for one (1) year from that day, or in
words, a full fiscal year.
4. A wage-only re-opener provision at the end of one
fiscal year.

This re-opener is recommended so that in the event the
forthcoming disposition of Proposal A effects a change in the
economic climate, the Parties are provided with an
opportunity to make reasonable and indicated adjustments.


Samuel S. Shaw, Fact-Finder

Grand Rapids, Michigan

May 30, 1993