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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between

Marlette Community Schools

-and-

Marlette Education Association

Marlette Community Schools

REPORT OF FACT FINDING HEARINGS OFFICER

Application for fact finding dated September 4, 1970, was submitted by the Marlette Education Association, hereinafter called the Association, and the undersigned was appointed Fact Finding Hearings Officer by letter of the Employment Relations Commission dated September 8, 1970.

Pursuant to notice duly given, hearings were held under Section 25, Act 176 of Public Acts, 1969, as amended, and the regulations of the Commission. At the close of the hearings, the parties mutually agreed to the issuance of the Fact Finder's report in accordance with the provisions of Rule 35(c), authorizing the ommission of reasons and basis for findings, conclusions and recommendations.

This report will separately consider each issue presented in the application for fact finding, briefly set forth the respective positions of the parties, and offer recommendations thereon.

Alan Walt

SALARIES

POSITION OF THE ASSOCIATION

The Association seeks beginning and maximum BA salaries of $7,600 and $11,400, respectively, a minimum and maximum BA plus 15 salary of $7,800 and $11,700, respectively, and beginning and maximum MA salaries of $8,100 and $12,150, respectively, with 10 steps (9 increments) on each schedule and a 5% index or differential compounded, applicable to each schedule.

The only question here is the appropriate salary to be paid to the district's teachers since ability to pay is not in issue. The U. S. Department of Labor Consumers Price Index shows a national increase of 7.5% between July, 1969, and July, 1970. The district can reasonably expect to receive state aid in the amount of $754,494, or an increase of approximately $801,000 over the 1969-70 year. Local property taxes for the present year should also bring in $487,249, or approximately $44,500 more than received for 1969-70. This is an approximate 10% increment. In this regard, it is significant that while the district is legally authorized to levy 19.9 mills for operational millage, it has only seen fit to impose a levy of 18.9 mills.

The district's total operational revenues for 1969-70 amounted to approximately $1.2 million. Of this figure, teacher salaries totaled $722,000 or 59.1% of operational revenues. Anticipated revenues for the 1970-71 year amount to $1.38 million and if the same percentage for teacher salaries is applied, $820,000 should be appropriated for teacher

salaries in the present contract, since there is $97,500 in "new" monies available for teacher salaries alone. It is the Association's position that every $100 increase over last years salary schedule will cost the district $10,500; under the present position of the parties, they are approximately $62,000 apart.

A comparison of F districts throughout the state (Marlette is an F type district) as well as all districts in Sanilac County reveals that average salaries in this district have not kept pace over the years.

AVERAGE SALARIES	1965-66	1966-67	1967-68	1968-69
Marlette	$6,256	$6,451	$8,011	$7,772
Sanilac County	5,690	6,225	7,251	8,048
F Type Districts	6,148	6,779	7,532	8,225(K)
State	6,896	7,535	8,238	9,134

No argument is made that this district's teachers should be brought up to the average of state salaries, but the Board's offer continues to widen the gap between salaries in this district and the state averages.

Teachers not only have been penalized in regard to actual salaries received but, since retirement benefits are computed on the basis of salary averages, a male teacher retiring at age 65 with 35 years of teaching experience will lose approximately $12,250 in retirement benefits during his lifetime (after having received $8,097

less than state median salaries during the last 5 years of teaching).

POSITION OF THE BOARD

It is the Board's contention that the Association has previously agreed to a minimum BA salary of $7,400, a minimum BA plus 15 salary of $7,600, and a minimum MA salary of $7,900 with a 4% index. Applying the index figure, the BA maximum, as agreed, is $10,360, the BA plus 15 maximum, as agreed, is $10,640, and the MA maximum, as agreed, is $11,060.

It ill-behooves the Association to come to the fact finding urging that a number of issues which were in fact resolved by temporary agreements are still open. This undermines the entire collective bargaining process. It is the Board's position that all issues save class size were resolved before the application for fact finding was presented and should not be reopened if the collective bargaining process is to be meaningful.

The Board also believes that if the fact finder should determine that some or all of the issues contained in the Association's application for fact finding were not previously resolved -- except class size -- it is placed in a position of having to commence negotiations anew on all these issues and cannot assume that there has been any temporary or tentative agreements on any issue.

FINDINGS OF FACT

In his opening comments to the parties, the undersigned urged

that all issues, or contractual provisions, upon which agreement was reached prior to the filing of the application for fact finding should not be included as open issues, and that the parties should be concerned only with those areas where they had failed to arrive at agreement on contractual concepts and language. The Board indicated that agreement had in fact been reached on the salary issue and on all other issues presented in the application for fact finding, except class size. The Association answered that while it believed agreement was possible on a salary package, it was rejected by vote of the membership and that it would be folly to claim that any agreements had been reached. Far from undermining the collective bargaining process, a recognition that an area remains unresolved is the only way that fact finding can be approached.

On this record, I am unable to conclude that the membership ever accepted the salary package presented to it although it is clear that the negotiating representatives thought the proposal would be acceptable. It is therefore necessary to consider the salary question and offer recommendations thereon. In doing so, the Board is urged to consider these recommendations and either accept them or use them as a point of departure for further negotiations. To adopt a hard line that "all bets are off" and that the parties must start from the beginning with new proposals and basic negotiation would not only be detrimental to collective bargaining but vindictive as well.

The state equalized value of the district for the 1970-71

year is $24,484,898. This should produce $487,249 in local property taxes as compared to $442,722 for the 1969-70 year, or a 10% increase. The district has 1,906 students (4th Friday count); based upon the foregoing state equalized valuation, State financial support amounting to $754,500 can be anticipated for the present school year. This is an increase of approximately $108,000. In the 1969-70 school year, state equalized valuation per pupil was $11,941, and in 1968-69 the district had operating expense of $523.45 per pupil.

The district does not contend that it is without financial ability to pay its teachers an adequate salary. The only question for recommendation is what constitutes a fair and equitable salary for the teachers of this district. I have carefully considered comparable salaries in F Type Districts as well as other salaries in Sanilac County. Based upon these items and the presentation of the parties at the hearings, the following are my

RECOMMENDATIONS

That the parties adopt a salary schedule based upon a minimum BA salary of $7,471, a minimum BA plus 15 salary of $7,686, and a minimum MA salary of $8,009, with non-compounded indexing of 5% at all steps within each schedule.

ACCIDENT, DEATH, DISMEMBERMENT AND TERM LIFE INSURANCE

POSITIONS OF THE PARTIES

The Association seeks the inclusion in this contract of $5,000 term life insurance with accident, death and dismemberment insurance provisions. This type of insurance should be carried by the Board for each teacher in the district regardless of any other insurance carried by the individual or presently provided by the district. The annual cost of this insurance is $2,041.

It is the Board's contention that the Association had previously abandoned this demand. Is therefore unwilling to enter into a contractual provision covering this item.

FINDINGS AND RECOMMENDATIONS

It is the fact finder's belief that, regardless of the Board's financial ability, the demand for accident, death and dismemberment term life insurance should not be included in the present contract. It is felt that the salary increments recommended above are substantial and should be accepted by the Association in lieu of this item.

COMPENSATION FOR DRIVER AND ADULT EDUCATION TEACHERS

POSITIONS OF THE PARTIES

The Association demands that teachers instructing driver

and adult education classes receive compensation at the rate of $6.00 per hour. During the summer months the compensation for teaching driver education amounted to $6.00 per hour and the Association can see no valid rationale for reducing the rate of compensation during the regular school year.

The Board's position is that $5.50 per hour is a fair and equitable rate of compensation for these activities and, furthermore, that such rate was accepted by the Association prior to fact finding.

FINDINGS AND RECOMMENDATIONS

In the petition for fact finding, the Association set forth its demand of $6.00 per hour for compensation of driver and adult education classes and indicated that the Board's "last proposal" was at the rate of $5.00 per hour. Clearly, the Board has substantially increased the rate of pay offered for this activity, and it is recommended that an hourly rate of $5.50 be adopted by the parties.

AGENCY SHOP

POSITION OF THE ASSOCIATION

In its presentation, the Association recognized that many arguments have previously been made in this area and that fact finders are well acquainted with the various pros and cons of the issue.

Nevertheless, it emphasized its legal requirement to bargain for all teachers -- not just members of the Association -- and indicated that it incurs expenses that should properly be spread against all teachers in the district, not just members of the Association. It seeks adoption of the so-called standard agency shop clause wherein the Association will hold harmless the Board if the latter entails or is liable for any expenses in regard to the enforcement of the provision.

POSITION OF THE BOARD

The Board opposes inclusion of an agency shop clause in the contract on the merits of the question and for the reason that the Association agreed to abandon this demand prior to fact finding.

FINDINGS OF FACT

On this question as on salaries, the Association strongly argues that its membership had rejected any contract which did not include an agency shop provision. As previously stated, I believe it would be extremely unwise to base a recommendation upon any tentative agreement by the Association's bargaining team if that position was not acceptable to the membership. For that reason, I believe this item should be taken up and a recommendation offered.

Since the Public Employment Relations Act was first adopted in this state, collective bargaining on behalf of teachers has resulted in wide-spread gains in salary, working conditions and professional achievement. A cursory perusal of collective bargaining agreements

throughout the state readily reveals just how great these gains have been. All teachers, not merely those who are members of collective bargaining associations, have benefited by the activities of the unions in this field. It goes without saying that substantial costs have been entailed in achieving these results -- in collective bargaining, in the research utilized in collective bargaining, mediation and fact finding, and in enforcement of legal rights under the Act and collective bargaining agreements. The resultant benefits have inured to all teachers and it is only equitable, I believe, that all teachers contribute a fair share of the costs involved in achieving these benefits. That requirement does not take from any individual teacher his freedom of choice or right to refrain from membership in an organization, and I believe it to be a falacious argument to characterize agency shop in such terms.

Furthermore, I do not believe a board should champion the position of those teachers opposing the agency shop. Since the Board is not a party to this issue, it can be argued that its real purpose is to undermine the effectiveness of collective bargaining associations. No charge has been made that the Board in this district has any such goal in mind. But it may be necessary for it to examine its true motives in opposing agency shop. Nor do I believe that a Board can argue that it is forced to lose "good teachers" if it must enforce the terms of an agency shop clause. Here again, it is

the individual teacher's decision to pay or not pay the equivelant of membership dues for benefits willingly accepted which is determinative of the action to be taken.

For the stated reasons, it is my

RECOMMENDATION

That a standard agency shop agreement be adopted in which the Association will save harmless the Board for any and all costs in enforcing the provision of the clause and for any liability which the Board may face in the event the clause is subsequently declared unconstitutional or illegal.

VOLUNTARY ARBITRATION

POSITION OF THE ASSOCIATION

The Association recognizes that fact finders have also been presented arguments on both sides of this issue since the adoption of the Public Employment Relations Act, and for that reason will limit its presentation. However, it has been almost universally recognized that voluntary arbitration is a most successful method of dispute resolution and that it provides to the parties a method of grievance settlement by an impartial third party which will insure the fairness of any award issued.

Furthermore, the Board need not fear that arbitrators will go beyond the authority set forth in the arbitration clause. To do

so would be an abuse of power requiring that the award be set aside.

It must be recognized that any method of grievance settlement that does not utilize a third party as an impartial umpire is detrimental to teacher morale. By providing binding arbitration, the parties will help to insure an excellent working relationship.

POSITION OF THE BOARD

It is the Board's contention that the Association abandoned this position in a temporary agreement reached prior to the application for fact finding, and therefore makes no comment on this demand. However, it does oppose the inclusion of an arbitration clause in the collective bargaining agreement.

FINDINGS OF FACT

As with the agency shop provision, I do not intend to take up this area in great detail. I believe the parties have considered it in past contracts and that they are both well aware of the respective arguments of the other.

It is my experience that many Boards fear inclusion of a voluntary arbitration clause in the collective bargaining agreement because it is considered a delegation of lawful powers. In this regard, it should be recognized that arbitral authority is limited to the four corners of the collective bargaining agreement which the parties have negotiated. Arbitration clauses should and do contain this legal limitation. If the arbitrator exceeds his jurisdiction,

his award may be attacked and set aside in the courts. If this fact is recognized, it also follows that no new or additional authority is delegated to the arbitrator. He is empowered only to act within the framework of the contract adopted.

The Board should also recognize that it is truly an unhealthy condition for it to sit in judgment of grievances in which the school administration is one of the parties to the grievance. Under no circumstance can the Board be considered impartial. Let me hasten to add that I truly believe Boards attempt to fairly and impartially hear and judge grievances but the very position they occupy clothes them with the same robes worn by members of the administration. In other words, the principal, the superintendent and the Board are the same entity as far as the grievance procedure is concerned.

It should also be recognized that grievance arbitration contemplates the use of experienced and professional arbitrators -- individuals trained in labor relations and experienced in public employment questions. Furthermore, the Board has a voice in the selection of the arbitrator. While the system may not be perfect, it does provide a readily accessible, relatively inexpensive, and prompt method of dispute resolution.

Based on the foregoing, it is my

RECOMMENDATION

That the parties adopt voluntary arbitration providing for

binding grievance resolution by an impartial third party and utilizing the arbitration panels maintained by either the Employment Relations Commission or the American Arbitration Association, and that such arbitration clause limit the authority of the arbitrator to the interpretation and application of the express terms of the contractual agreement.

CLASS SIZE

POSITION OF THE ASSOCIATION

In the last contract between the parties, no mandatory requirements concerning class size were included. The Board agreed that it "shall strive to establish class sizes recommended by the North Central Association and/or Association", and also accorded to the administration sole authority to determine "smaller or larger class loads" based upon the availability of facilities and the experience and qualifications of the teachers.

Two separate questions are contained in the Association's present proposal concerning class size. As to those classes held in permanent buildings, the Association agrees that inclusion of the language "shall strive to establish class sizes" recommended by the North Central Association, while not totally enforceable language, is a strong commitment by the Board. Nevertheless, it is well-established that the size of the class is directly related to pupil achievement and studies have shown that smaller class sizes result

in greater academic achievement. Furthermore, smaller classes permit greater individual pupil contact by the teacher, minimize the number of aggressive acts between students, and result in a favorable peer relationship between pupils, and pupil and teacher. Examination of the instructions for completing the annual statistical report of the State Board of Education reveals that the State considers elementary classroom size of 30 students and secondary classroom size of 25 students to be "normal capacity".

A second issue on which the Association is deeply concerned is the use of portables or the so-called add-a-class trailers. There are presently 9 of these portable structures used for 5th and 6th grade classes. They are located outside the McDonald elementary school and house four 5th grade classes and five 6th grade classes. There are two 5th grade classes of 32 students each and one of 31, three 6th grade classes of 29 students each, one of 30 and one of 27. Each of these portable units is 20' x 40' x 8' for a total of 6,400 cubic feet. Each is heated by an electrical unit, has no other source of fresh air than the windows located at the sides of the unit and the door, and has no plumbing or water facilities. In order to use the bathroom, pupils must leave the portables and enter the McDonald School building. In the winter months it is necessary that pupils dress and undress to utilize these facilities.

It is the Association's contention that although these portable units were initially found to comply with state health

regulations by the county sanitation officer, they no longer comply because of the number of students occupying each building. During the winter months, it is a certainty that windows and doors in the units will not be opened and there is no other source of fresh air. There is, therefore, less circulated air per cubic foot than permissible under the health code and such condition contributes to the spread of respiratory and other communicable diseases. Furthermore, other districts utilizing portable units have installed bathroom facilities, drinking fountains and have provided for circulation of outside air so that the units continue to meet health code requirements even after the original inspection. It is the Association's position that teachers instructing in these stations are subjected to additional duties and health hazards, and it recommends that the classroom size provision of the contract eliminate the section B provision, substituting therefor the following language:

> "The Board agrees that the maximum class size in the re-locatable classroom shall be 25."

POSITION OF THE BOARD

It is the Board's position that the class size provision of the 1969-70 contract be incorporated into the present contract. This provides that the Board will strive to establish class sizes recommended by the North Central Association and/or the Association but recognizes that smaller or larger class loads must remain the decision of the administration based on certain factors, to wit, the availability

of facilities and the experience and qualifications of teachers.

As to portable classroom class size, the Board disputes the Association's contention that their use is violative of the state health code. The intended use has been approved by the county in accordance with the health code. Furthermore, the question of compliance with the health code is not properly within the collective bargaining framework and is irrelevent to this fact finding. Suffice it to state that the Board has obtained the approval of the Michigan Department of Education and Health Department, and that the units were initially approved by the Board and the teachers.

It must be recognized that between October, 1967, and April, 1970, there have been three building bond issues submitted to the people -- all of which were unsuccessful. The Board is compelled to utilize portables even though it would prefer bonding authorization so that the necessary permanent facilities could be constructed.

The portables are used in the 5th and 6th grades only. Since they were first installed, the number of students in K through 6 has decreased, although there are approximately the same number of students in these two grades (5 & 6). The Board points out that there is a teacher-class ratio of less than 29 in K through 6, which excludes two special education rooms of 14 students each (further lowering the ratio). It should be clear, therefore, that the Board is not using the portable facilities to avoid spending funds required

to build permanent structures. It simply does not have the money available for building construction. However, it will continue to strive for smaller classroom size but does not feel that the imposition of mandatory standards is possible at this time.

FINDINGS OF FACT

As noted previously in this report, there were 1,906 students in the district for the 4th Friday count. Of this number 1,039 are in the kindergarten through 6th grade level. There are 35 classroom teachers at this level including two special education instructors plus one librarian, a vocal instructor and an instrumental teacher. The district is fully accredited by the North Central Association

In regard to class size other than the portable units, it is my

RECOMMENDATION

That the language of the 1969-70 contract be incorporated into the present agreement. This provision is a forthright statement of the Board's intent to establish class sizes as recommended by the North Central Association or the Association. It continues by indicating that at the elementary level, it will strive for a teacher-pupil ratio of 25 at kindergarten level and 30 for grades 1 through 6. This is in accordance with the information contained in the Association's Exhibit 15b, entitled Instructions for Completing Annual

Statistical Report.

The portable or add-a-classroom area is a much more difficult one in which to make a recommendation. As a preliminary matter, if the conditions present in the portables because of overcrowding or lack of proper ventilation or sanitary facilities is in violation of health regulations, such fact can certainly present issues properly within the negotiating framework since working conditions are involved.

It is established in this record that the portables did meet both State Board of Education and State Health Department standards before they were put into use. As acknowledged by the Association, there is no requirement for continuing or on-going inspection after initial approval. If conditions existing in the portables as presently used are violative of health regulations, the only way enforcement can be achieved is through amendment of the regulations -- or a statutory enactment -- to provide for periodic inspection. Furthermore, I am not able to conclude under the record as presented that actual violations of health standards exist. This is an extremely technical area and, while susceptible of proofs, would require the presentment of testimony through expert witnesses before any such finding could be made. Although working conditions of the teachers in portables clearly is a negotiable issue if violations of health standards are present, such finding cannot be reached here.

The Association also argues that teachers assigned to portables must undertake additional duties than those assigned to

classrooms in permanent structures since, in the winter, it is necessary that pupils put on and take off outerwear when they use the bathroom facilities in the permanent structure. On the other hand, the Board acknowledges that the portables are not intended as a substitute for additional permanent facilities but points to the fact that 3 bonding issues have failed in recent years and there is no way that such facilities can be constructed. Parenthetically, it also mentions that the district is a center for the manufacture of mobile housing, indicating that there may well be some difficulty in convincing the citizenry that portable units -- which are in the nature of mobile housing -- are violative of health standards.

It is my finding that there are in fact certain different and additional requirements imposed on teachers stationed in the portable units. These differences, as advanced by the Association in its argument, should be recognized by the Board. It is not sufficient to say that permanent facilities cannot be constructed. If necessary, additional portable units will have to be purchased, recognizing that this is an unsatisfactory solution which only prolongs the inherently inferior quality of portable units as teaching facilities.

In order to fully explore this question further, it is my

RECOMMENDATION

That a joint committee comprised of Board and Association

representatives be established by contract for the purpose of seeking permanent solutions in regard to the use of portable facilities.

That the Board and Association continue to strongly recommend to the citizenry of the community that effective education requires construction of necessary permanent facilities, and that the Board recognize contractually that differences in working conditions are present in these units. In regard to this last point, the Board should either commit itself to the purchase of additional portable units strictly on an interim basis or to smaller class sizes in the portable units.

Finally, it is recommended that subsection B of Article IV, §C, be completely eliminated in that the preceeding section of the contract which indicates that the Board of Education "shall strive to establish class sizes recommended by the North Central Association and/or Association" is a sufficiently clear statement of intent and still leaves the final authoirty in the hands of the Board.

DATED: November 6, 1970

Alan Walt
Fact Finding Hearings Officer