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MICHIGAN EMPLOYMENT RELATIONS COMMISSION

MARTIN PUBLIC SCHOOLS

Case No. G76 C-245

-and-

MARTIN EDUCATION ASSOCIATION

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FACTFINDER'S REPORT AND RECOMMENDATIONS

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MARTIN PUBLIC SCHOOLS

-and-

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FACTFINDER'S REPORT
AND
RECOMMENDATIONS

The parties hereto, the Martin (Michigan) Public Schools and the Martin Education Association have settled all contractual issues except two:

Article 8 - Grievance Arbitration

Schedule A - Salary Schedule

The two issues are dealt with separately herein.

Article 8 - Grievance Procedure

Section 8.23 of the recently expired collective bargaining agreement provides for advisory arbitration at the third level of the grievance procedure.

The Association has demanded here that binding arbitration be substituted for advisory arbitration. It proposes that Section 8.2 be changed to read:

> "All working conditions, contractual or otherwise, Board Policy, and administrative actions shall be grievable and subject to binding arbitration. No exclusions shall be made to the foregoing in any other part of the contract."

And in Section 8.23, it would substitute the word "binding" for the word "advisory."

The Board resists the introduction of binding arbitration to the contract, arguing, first of all, that the fact that the Association has yet to process any grievance even to the advisory arbitration

stage points up the lack of need for any change, and, secondly, that binding arbitration permits no appeal to a court of law except on the basis of fraud.

The Board further objects to the Association's proposed change in Section 8.2, contending that an arbitrator's powers should be limited to matters of contract only, and not to extra-contractual matters, including Board policy.

Advisory arbitration is exactly that - advisory only, not binding on either party to the dispute. It does not provide an avenue for finally resolving a dispute, because neither party thereto is bound to follow the arbitrator's advice. Since there is no step beyond advisory arbitration to which either party may proceed if the other party simply chooses not to act on the arbitrator's advice, the arbitration is itself rendered meaningless and the dispute left unsettled.

Needless to say, grievances left unresolved offer nothing to the strength of the collective bargaining process. A procedure which permits either party to a dispute to ignore or disregard the advice of a mutually selected neutral party shakes the very foundation on which good faith collective bargaining must proceed if employer and employee are to work out their differences at the bargaining table.

Although the Factfinder finds the Association's suggested change in Section 8.2 as overreaching, he is convinced of the merit of binding arbitration, and finds the Board's objections to the concept lacking in merit. It may well be true that heretofore there

has been no need for binding arbitration because as yet no grievance has been processed to Level 3 of the grievance procedure. Affirmatively, it speaks well of the parties' efforts to resolve all disputes at Levels 1 and 2. Negatively, it suggests the Association's reluctance to proceed to the costly advisory arbitration level with no assurance that even if its grievance be found meritorious the Board will take whatever corrective action is recommended. It is no answer to the Association to say that "up to now you haven't needed binding arbitration", and conclude therefrom that the Association won't need it in the future.

Negotiation time is the time for proposing contract changes. If advisory arbitration is ever to be replaced by the far more generally accepted concept of binding arbitration, that change must arise out of negotiations toward a new contract. It cannot come during the life of an existing contract. Nor should it be a concomitant of change that the Association first show that it has been hurt by the present system.

The Board's second objection, that no appeal is available from binding arbitration except in unusual circumstances, goes to the very concept of arbitration. Arbitration is a substitute for court action. If a grievance is in the strictest sense a claim of breach of contract, and it is, then that claim must be heard and tried and the issue resolved if labor peace is to be assured. If not in the court, where? Arbitration is a substitute for litigation; it takes far less time; it is much more highly specialized; and, not the least, it is far less costly.

In addition, and at least equally important, arbitration is a substitute for work stoppages. Where serious disagreement between employer and employee exists, arbitration is the safety valve that forestalls strike and lock out alike. It permits a neutral third party to look at the issues objectively and make a decision based on what he sees are the true merits. It represents a surrender by each party of its right to take unilateral action designed to force the other party into submission. It permits each party to present its views to a neutral party, just as it would do if the case were litigated before a judge, and to rely on the integrity and competency of that neutral party to settle the issue fairly and reasonably, just as the parties would have to do if they tried their case to a judge. Neither party is asked to surrender more than the other, and if no appeal be provided, except in extraordinary circumstances, it is because appeals take time and cost money and do not lend themselves to an accomplishment of the ultimate objective of a grievance procedure, the fair, orderly and timely settlement of labor disputes.

The Association goes too far in its demand, however. It would require final and binding arbitration on extra-contractual matters and on Board policy as well as on matters of contract. This Factfinder is also an arbitrator and he can say that he, for one, has no desire or ambition to arbitrate matters extra-contractual in nature. An arbitrator derives his powers from the contract under which he is appointed. That contract almost invariably limits him from altering, changing, amending, adding to or taking from any of

the provisions of the collective bargaining agreement, and the reason for that is obvious: If he be given such powers, then the parties' contract may be changed by the arbitrator to fit his notion of what their contract should be and the parties are forced to live with his concepts of what is fair and equitable and not what they themselves have agreed is fair and equitable. This arbitrator wants no such authority, and he doubts that any arbitrator does.

The Factfinder recommends, therefore, that the Association withdraw its demand for change in Section 8.2 and agree that the language thereof as found in the most recently expired agreement be renewed; and that the Board accede to the Association's demand that the word "binding" be substituted for the word "advisory" in Section 8.23.

Schedule A

The Association's salary demand is for a 7-1/2% increase across the board at each step of the 1975-76 salary schedule.

The Board's offer is a $200.00 increase to each teacher, regardless of position on the 1975-76 Salary Schedule.

A review of the evidence offered by both parties shows two virtually indisputable conditions. First, that the teaching staff in the Martin system is significantly underpaid when their salary level is compared with those of neighboring school districts of comparable size; and, second, that the Martin Public Schools cannot afford to pay the teachers what they have demanded.

The Association has offered exhibits comparing Martin's salaries at the BA beginning, BA maximum, MA beginning and MA maximum

levels with those of the following school districts, all neighbors in Allegan County: Hamilton, Allegan, Otsego, Hopkins, Wayland, Plainwell, Fennville and Saugatuck.

Among that group, Martin ranked last at the BA beginning level in 1975-76, and would move ahead of only Saugatuck if its demand for a 7-1/2% increase were to be met in the current year. Martin would remain last at that level if the current contract be settled on the basis of the Board's offer of $200.00 across the board

At the BA maximum level, Martin would move ahead of only Saugatuck and Allegan if the Association's demand be met, and would remain last among the nine districts shown if the Board's offer of $200.00 became a reality. In addition, it is shown that only Otsego takes more years (14) to reach the BA maximum, and Otsego is highest among the districts compared at the BA maximum level, than Martin, where it takes 13 years to reach even the lowest paying salary in the group.

At the MA beginning level, the picture remains virtually the same. If the Association's demand be met, Martin would move $11.00 annually ahead of Saugatuck. If the Board's $200.00 offer be negotiated, Martin would remain last among the nine districts compared herein, some $488.00 less than Saugatuck, the next lowest paying district.

And at the MA maximum level, the Association's demand, if granted, would put Martin ahead of only Saugatuck to the tune of $89.00 annually, whereas if the Board's offer of $200.00 be agreed

upon, Martin would remain last, some $750.00 annually behind Saugatuck. Again, only Otsego takes more years to get to the maximum than Martin, which takes 13.

In addition to the foregoing, it is clear from a review of Association Exhibit 9, which is a comparison of fringe benefits enjoyed by eight of the nine Allegan County School Districts, (Saugatuck is not reported) that Martin doesn't make up for its deficiencies in salaries in the fringe benefit area. All eight enjoy a 5% paid retirement program. All but Otsego enjoy a full paid Health Insurance Program, and two districts, Plainwell and Wayland enjoy a Dental Insurance Program, with Allegan undergoing such a program effective with school year 1977-78.

It is significant to note, also, that the Board does not suggest, in reply to the salary inequalities that are obvious, that Martin's teachers have "made up the difference" somewhere else.

Indeed, the Association's demand for a 7-1/2% increase is anything but excessive in this Factfinder's eyes if it be measured alone against the salaries and fringe benefits paid in neighboring school districts. That measurement, however, does not reflect one additional and highly critical factor - the Board's ability to pay.

Therein, it is clear, lies the problem.

The Association's demand for a 7-1/2% salary increase no doubt was predicated at the outset on what it believed was a reasonably healthy condition as far as Martin's General Fund Equity (GEF) was concerned. Its Exhibit 11 shows the GEF at the end of the 1974-75

school year to have been $136,704 vis-a-vis the average GEF for Class M school districts as being $124,187. On that basis the Association's salary demands appear not to be unreasonable. Board Exhibit I, however, the School District's annual financial report for fiscal year ending June 30, 1976, shows a far different picture. First of all, it shows an adjustment of $12,316 to the June 30, 1975 GEF, reducing it from $136,704 to $124,388, and it shows 1975-76 expenses as being $101,452 in excess of revenues for the same period, leaving the GEF as of June 30, 1976, at $22,936, a far cry from $136,704.

In addition, Association Exhibit 13 shows that of the eight neighboring school districts reflected therein (Wayland is not included), Martin's State Equalized Valuation per pupil is by far the lowest, whereas its total millage assessment is 27.50, fourth highest among the districts reflected therein. Board Exhibit B has converted that same information into total available dollars, and SEV per pupil, and against Plainwell's SEV per pupil of $20,712, Otsego's $19,791, Allegan's $19,237 and Wayland's $15,778, Martin's SEV per pupil of $14,500 fares not well by comparison. Martin, it is clear, is simply a poorer school district than its neighbors - not poor in the quality sense, but poor in resources - and therein in large part lies the Board's inability to compete.

Even with that, however, its immediate cash flow limitations seem to have arisen not so much out of its lower SEV per pupil as out of a need to spend its available funds on capital items rather than on salary increases. An unbudgeted and unanticipated expense of some

$19,000 went to the replacement of water wells, which the District's Superintendent says had to be done if one of the schools in the district was not to be closed. The district spent some $29,977 for two new school buses and paid cash therefor rather than incur the interest charges that accrue on borrowed funds. Board Exhibit K lists that expense and others that were either totally unexpected or higher than expected, all of which, together with increases in energy costs, the Superintendent's salary, in salaries for two Principals (for whom the working year has been extended reasonably commensurate with the increased salaries), wages to bus drivers, custodians and cooks, documented item by item on Board Exhibit I, have resulted in the almost total absorption of the GEF, to a point where, as of the date of the fact finding hearing, the school district was in the black only $298.00.

Argument might well be made that some of the expenses that have been incurred in fiscal 1976-77 could have been avoided so as to keep the cash flow sufficiently fluid to permit a 7-1/2% salary increase to teachers, and the Factfinder might so find. Argument might also be made that when the Board went for millage in the last school millage election in June, 1976, it should have gone for more than only that which was expiring at the time, and perhaps it should have. Nobody will ever know what the results would have been had it done so, but its decision not to go for more was not without justification, and the Factfinder cannot find that it was shortsighted or unwise.

All of which leads to a finding that the school district simply cannot afford to accede to the Association's demand for a

7-1/2% salary increase across the board. It cannot, legally, spend money it does not have and the Factfinder cannot recommend that it operate contrary to law.

The Factfinder's findings are, then, that the teachers in the Martin School District are underpaid when their salaries and fringe benefits are compared with those of neighboring school districts. The taxpaying public cannot in fairness expect, even in what might be described as an employer's market, the teachers to continue to subsidize their children's education by working at unreasonable and inequitable salary levels. The Board, it appears, is making do with what it has and the Factfinder cannot find at this point that its priorities are any more out of balance than the shortage of funds compels them to be, but it doesn't have enough, at least at present levels, to meet all of its responsibilities to the public, not the least of which is to assure equity to the teaching staff.

Given the facts before him, the Factfinder's recommendation has to be that the Association accept the Board's offer of $200.00 across the board.

Date: February 15, 1977.

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