

8/22/78 FF

143

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding

Concerning

Mason County Central Board of Education

-and-

Mason County Central Education Association

Before S. Eugene Bychinsky Esq.
Hearing held August 4, 1978

APPEARANCES

For the Board of Education:

Allan Luce, Esq.

For the Education Association:

David Hartman

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

FINDING OF FACT AND RECOMMENDATIONS

On March 15, 1978, the Michigan Employment Relations Commission, on its own motion, concluded that the matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known. The instant Fact Finder was appointed as Hearing Officer and Agent to conduct a fact finding hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commissions Regulations, and to issue a report with recommendations with respect to the matters in disagreement.

Mason County
Central Board of Education

In its application for Fact Finding, the Association recited the following statement of facts constituting the issues involved:

- "1. School cancellation -- snowdays-- teachers reporting.
2. Grievance procedure
3. Teaching conditions (class size)
4. Dues deduction (proposed employee service fee)
5. Teachers evaluation and just cause for discipline
6. Lay off and recall
7. Salary schedule advancement and experience credit
8. Length of contracted teacher year.
9. Compensable leave for pregnancy and childbirth
10. Mileage
11. Insurance benefits
12. Association leave days
13. Student teacher fund
14. Retirement incentive and severance pay
15. Salary schedule (regular)
16. Extra duty compensation (1978-1979)."

Preliminary discussion was held with the parties on April 26, 1978, in Scottville to determine the specific problems involved in each of the issues that were recited above. At this preliminary meeting, issue #14, relating to retirement incentive and severance was withdrawn by the Association. Further, the parties presented the Fact Finder with detailed information on each of the remaining issues, and agreed to receive an interim report from the Fact Finder as to his recommendations on the issues based solely on his reaction to the information submitted at that time. Neither party was obliged to waive any right whatsoever, by the interim report of the Fact Finder, but both parties were willing

to receive such a report in the hope that its contents might provide a mechanism for expeditious settlement of the issues. A summary report was then presented to the parties on May 29, 1978.

The Fact Finder was then advised by the parties that a number of attempts had been made by both of the parties to resolve the issues that remained to no avail. A request agreed upon by both parties, was made to the fact finder to meet with both parties in a further attempt to aid in resolving the issues through the mechanism of a formal Fact Finding Hearing. Such a hearing was held on Friday evening, August 4, 1978, with the public in attendance. Both sides presented their facts and arguments on each of the issues, and had full opportunity to examine and challenge, with the Fact Finder, any information that was presented by the other side. Following this presentation, the Fact Finder studied the details of the thorough presentation that had been made by each side and now offers the following recommendations with respect to each issue.

- - - - -

1. School cancellation -- Snow days.

This issue was reported to have been resolved during a bargaining session held on June 9, 1978. While the terms of that resolution were not presented at the fact finding hearing, and additionally, may well have been a part of a package proposal, if the parties even tentatively resolved that issue, that resolution is urged upon the parties.

- - - - -

2. Grievance Procedure.

In the contract that existed for the years of 1975-76 and 1976-77, a grievance procedure was provided, terminating in binding arbitration.

In its proposal, the Board has proposed a continuation of the Grievance Procedure with the following two deletions from that Procedure:

1. In

---Section 3. "The Arbitrator shall only act upon alleged violations, misapplications, or misinterpretations of the expressed provisions of the Agreement or prior written personnel policy."

It is the Board's proposal that the words ---"on prior written personnel policy" be deleted.

It is recognized that the Board's policy may pertain to personnel matters and that it may be desirable, and necessary, to modify that policy from time to time. The contract that ultimately will be agreed upon will contain many items that the parties have negotiated over an extended period of time. The contract itself will set forth those matters that are no longer available to the Board for review and change, at least during the period of this contract. Further, to the extent provided for by this contract, the Board cannot modify or alter any provision of this contract following its ratification or adopt any policy that would diminish the rights of the teachers under the contract. All prior written policies of the Board are limited and controlled by the language of the

contract. Consequently, the continued need for the deletion relative to prior written personnel policies is supported.

2. The second deletion, proposed by the Board, from the language of the expired contract, is the clause that reads as follows:

"J. During the pendency of any proceedings and until a final determination has been reached, all proceedings shall be private and any preliminary disposition will not be made public without the agreement of all parties."

It is noted that this clause is also absent from the revised Grievance Procedure that is proposed by the Association. Accordingly, its deletion from the existing language is concurred in.

Considering the proposal by the Association of substantial language changes in the prior Grievance Procedure, for the most part, the changes would appear to be of words, not of substance. In the final paragraph of the Association's proposal, is found the following sentence:

"If any teacher or bargaining unit member shall have been forced to have been improperly deprived of any professional compensation or advantage, the same or its equivalent in money shall be paid to the teacher and his/her record cleansed of any reference to this action."

The problem with the proposed sentence is that it lacks definition of a degree as to make it incapable of either administration or resolution. What is a professional advantage? Is teaching a class at 11:00 a.m. rather than the difficult after lunch period constitute a professional advantage? Does having a desk with a swivel chair constitute an advantage over a straight back chair? etc, etc. This Fact

Finder has known teachers who have made these specific claims. Are these, then, arbitrable matters? This Fact Finder thinks not.

At the preliminary hearing and also, at the Fact Finding Hearing, no basis was offered for the extensive new language offered by the Association. The existing language has served the parties well, and hence is indeed preferable to the language preferred by the Association.

- - - - -

3. Teaching Conditions -- Class Size

Basically, the distinction between the Association's demand and the position of the Board is the establishment of the class size standards that would limit class size. In DK-5, the Association seeks the following limits:

DK - 17
K-3 25
4-5 27
and elimination of all split grades in traditional classrooms.
6-12 - limits roughly from 75 students per day in remedial reading to
175 students per day in music.

The Board proposal, on the other hand would provide for "additional aide time" if their teacher-pupil ratio is exceeded.

What the Association wants in constraint is as severe as that which the Board ^{wants} is vague. Further, class size limit arguments that contend that teachers are less effective, with pupils in attendance that exceed a specific number, simply have never been substantiated. Certainly physical limitation, such as occur in Shop or other areas where there are limited

work stations, must be observed, where safety considerations are paramount. But such limits need not be part of a contract. While class size limitation may have some effect on the quality of teaching, under some conditions it has a much more marked effect on the fatigue of the teacher. The only logical way to help the situation is not by paying the teacher more for over-size classes (a remedy that is not proposed here) nor by constricting the administration to absolute maximums that cannot be exceeded (such as is proposed here). The Association demand in this respect could produce an unreasonable burden on the finances of an already problemed district, and still not hit at the heart of the problem. Every teacher has mundane chores to undertake that are in more or less direct proportion to the size of the class. The grading of papers, is but one example of a time consuming effort, that under certain circumstances need not be undertaken by the teacher but by a teacher aide, particularly where essay type responses are not involved. There are a myriad of chores that teachers do, where relief is more available than an extra student or two is burdensome. It is in these areas that the Board ought to provide some measurable assistance. While the ratio of student to teacher set forth in the Association demands, are not, in and of themselves, unreasonable, it is recommended that the teachers be provided direct teacher aide assistance for each student over the maximum, as the sole obligation of the Board, if the Administration finds it necessary to exceed the limits set forth. The formula that is recommended is that for each student over the maximum, the teacher receive an hour per day

of a teacher aide, if the teacher requests such help.

Further, in order to provide some means for effecting such a formula, it is recommended that the implementation of this provision be made at the beginning of the 1979-80 school year. A further reason for the timing of this formula relates to the financial difficulties that this District finds itself in currently, and the need for additional recuperation time.

- - - - -

4. Dues Deduction (proposed employee service fee)

This item, along with the issue relative to school cancellation, was resolved in the June 9, 1978 package proposal exchange.

- - - - -

5. Teacher evaluation and just cause for discipline.

The Board position relative to the existing language (in the expired most recent contract) is that 1) evaluating sessions be extended from 15 to 30 minutes, and 2) that the evaluation procedure will be reviewed with new teachers. The Association, on the other hand has presented a complete new write-up which, at the fact finding hearing, incorporated interim suggestions that were made by this Fact Finder. It is the contention of the Board that the old language has proven adequate during the prior contract and hence should be left alone. In the statistics of the Board, it is noted of the 44 teachers who have left Mason County Central since the 1974-75 school year, 28 of them left for what would appear to be

personal reasons such as maternity, retired, or spouse moving. However, it is noted that 15 left for reasons that could be related to their teaching performance. This latter group includes the following: 9 left to accept teaching duties elsewhere; 5 to pursue other careers, 1 was laid off and 1 left due to illness.

Of course this data, in and of itself is not revealing of any fact except that there is turn over, as in any school district, and that at least some of it may be due to poor evaluations, properly made by the Administration.

In reading the Board procedure one cannot find fault with any of its provisions. In reading the Association's procedure one can only note that the proposed procedure, as modified, is a procedure that may be characterized as a much more detailed procedure, but also one that is complete, explicit, and workable. The mere fact that the procedure is one which the Association proposes, and is a complete procedure, means that it is more likely to be understood by the teachers, accepted by them, and would be of maximum assistance in providing the Board with a continuing administrative tool which can be used effectively. It is also noted that the Association proposal requires a much greater degree of specificity in the evaluation procedure, which, this Fact Finder regards as an essential ingredient to fair appraisal of teacher performance. It is for the above reasons that the proposal of the Association, as modified, is recommended.

- - - - -

6. Lay Off and Recall.

The prior contract between these parties did not include a provision for lay off and recall. In a marathon bargaining session of March 3, 1978 and March 4, 1978, the parties, after much compromising on both sides, reached tentative agreement on the language that has been proposed by the Board. It is noted, therefore, that at least for some period of time, that the parties agreed to the language that the Board has continued to support. The new language offered by the Association, is a marked departure from that which was at one time agreed upon. There is simply no basis for now saying that the Association language is better than that which had been tentatively agreed upon. Further, it does not appear that the compromises that were made in the Marathon session extended beyond the language of this particular section. It would appear that this section stood on its own merits and was not offered in exchange for some other section. It is for these reasons that the language of the Board, which language was, at one time in these negotiations, agreed upon by the Association, be recommended for adoption.

- - - - -

7. Salary Schedule Advancement and Experience Credit.

Article XXI of the prior agreement sets forth the basic salary schedule for 7 categories of educational achievement. This schedule is followed by 4 provisions:

1. Payment will be based on semester hours of credit
2. Credit must be in teachers major or minor field or with prior approval of the Administration.
3. Evidence of extra hours earned must be provided

the administration by September 1 of the year for which payment is expected.

4. If a teacher earns thirty (30) semester hours or more of graduate level credits in his major or minor field and the content of the courses taken is directly related to the instruction program in which he is employed, he shall consult with the Superintendent to determine equivalency. The granting of an equivalency is at the discretion of the Superintendent of Schools.

The Board now proposes to modify the historic annual advancement which was a function of continued employment, to a system that would make advancement on the salary schedule available to those teachers who have satisfactory evaluations. At a time when even the evaluation system is in contention, the merit of this proposal is not seen. However, it is essential to note that, as this obviously is a Board objective, the first step in achieving this objective is the evolvement of an acceptable evaluation system. It is to be noted that this Fact Finder recommended the system that was proposed by the teacher's Association. It would be wise to install this system and make it work, and then to consider the implication of adverse appraisals in a future contract. One must agree in the concept that the Board forwards, which in essence is that there ought to be more choices than denial of continued tenure, or an automatic increment. In actuality, however, an adverse, well based and fact founded unsatisfactory appraisal is in itself a warning. One cannot help but feel that perhaps some of the teachers who left this district in the past years to teach elsewhere, did so because of adverse performance ratings, maybe even of an informal nature. Continuation of the current system is therefore recommended in this

regard.

With respect to experience credit or placement on the salary schedule, no workable solution has been proposed by the Association to that of leaving the matter to the discretion of the superintendent. No data whatsoever was produced showing any problem in this regard.

- - - - -

8. Length of Contracted Teacher Year.

The 1977-78 school year just concluded had

181 student instruction days
186 returning teacher days
187 new teacher days.

The Board proposes a change in student instruction days to 182 and the addition of one more day for returning teachers and one more day for new teachers.

No merit is seen in extending the historic school year for each of these categories by one day. No argument was presented as to the basis for such an extension and no basis is seen.

It is recommended that the basic school year remain as it was in 1977-78, for the duration of this contract.

- - - - -

9. Compensable leave for pregnancy and childbirth.

Over the past few years, the Administration has approved the use of sick leave for pregnancy and related illness. The Association has proposed that ---"Illness or disability associated with pregnancy or childbirth will be treated as any other illness or disability." While the Board contends that courts are interpreting and reinterpreting this issue, none the less it is

an issue that can be negotiated and settled insofar as this District is concerned. It is also noted that it is an issue that many Districts have handled in the manner proposed. The Association proposal is straight forward and simple, and solves this otherwise contentious problem for this District. It is recommended.

- - - - -

10. Mileage.

The mileage issue was among the issues resolved at the June 9, 1978 negotiating session, based on an interim recommendation by this Fact Finder that it be set at \$.17 per mile.

- - - - -

11. Insurance Benefits

The Board has proposed that the insurance package be:

1. Continuation of MESSA L.T.D.

There is no issue to be resolved in this regard.

2. Delta Dental B.

There is no issue to be resolved in this regard.

3. Health and Hospitalization.

The Board's concern relates to the Association demand of up to full family with MESSA insurance with no cap. The concern of the Board is born out by the historical dramatic increase in the costs of health care insurance that both Blue Cross and MESSA have experienced. The Board has proposed that the increase in their responsibility be limited to a 6% maximum. The Association, on the other hand wants the coverage without a cap. On June 9, 1978, the Board, among other

changes, proposed that the cap be increased to 8%. This cap is now realistic and is recommended, in view of the fact that COLA is running, currently, around 7.4%.

With respect to retroactivity for 1977-78 school year, the factors that enter this consideration primarily concern the financial status of the District. Under different circumstances, or where there is evidence that a contract resolution was delayed by a desire to save expenses, a different conclusion might result. In this case, the fact is that the Board has been struggling with a very difficult financial crisis. A community can only have as good a school system as it can afford, or is willing to grant. In the case of this school district, the administration is severely handicapped by an insufficient revenue situation which it must cope with in the best manner it can. There can be no doubt of the administration's sincere and capable efforts to regain a position of solvency. For the year just past, better judgment demands that considerable weight be afforded to the judgments of the administration that are directed toward regaining community support for the school system that should be realized. However, the effective date should not be made contingent upon the date of ratification. It is recommended that the effective date be the commencement of the 1978-79 school year.

- - - - -

12. Association Leave Days.

This issue was resolved at the June 9, 1978 negotiating session.

- - - - -

13. Student teacher fund.

This issue, though listed in the petition for Fact Finding, appears to have been satisfied by the parties as it did not appear at the fact finding hearing, or in any of the documents that were supplied to the Fact Finder.

- - - - -

14. Retirement incentive and Severance pay.

It is noted that the Association retirement incentive demand has been withdrawn.

With respect to the issue of severance pay on retirement, for unused sick leave days, the Association has accepted the Fact Finder's interim proposal, and that interim proposal is again repeated herein: namely that payment for sick leave unused at retirement be increased from \$5 to \$7 per day and that the maximum be increased to \$630.

Salaries and increments have increased over the prior several years and will be increased further in the future. It is fair and equitable that the incentive to good health have some relationship to that increase.

- - - - -

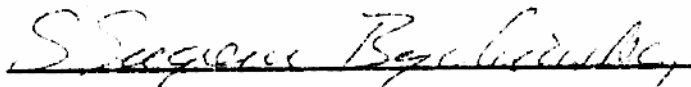
15. Salary Schedule.

In actuality, the Association and the Board are fairly close in their position with respect to the salary schedule for the 1977-78 year. Finer resolution of the differences in position is not capable of exactness, or of evolvment of compelling comparisons and the like. It is again noted that this District has been in a deficit condition during the preceeding school year, and has made progress

during the current (1977-78) year toward reducing the deficit. The Administration has shown honest effort and capability in the handling of a difficult situation. During the 1977-78 school year, the schedule offered by the Board is recommended, and to be retroactive for that school year. For the upcoming school year, it is noted that the cost of living March to March approached a 6.8% increase. It is also noted that a higher cost of living increase was experienced in the mid summer months of 1978. Progress must be made but targets must be realistic. While the Association demands for a salary schedule for the 1977-78 school year, are well within the range of reasonableness, all factors external to the District being considered, only the factors within the District compell an adoption of the Board's 1977-78 proposal. But progress must be continued or a make up, to a degree must be afforded the salary schedule for 1978-79, by the 6.8% figure - as an adjustment to the base. Again, to afford the Board full time for recovering it is urged that a 1979-80 period be included in this contract and that this base be adjusted by COEA (cost base) but that a maximum of 7% and minimum of 5% be also set. To make the optimum progress in its regaining of fiscal health the Administration, and Board must know the ultimate range of the expected increase. This formula would provide that degree of certainty that could well yield fiscal responsibility to the Board, and to the community.

During this 1979-80 year a further adjustment would be in order - namely that of providing a form of longevity payment for the 15 and 20 year level of experience. It is recommended that this payment be 2% and 4% respectively. Its effective date is again deferred to 1979-80, to enable proper budgeting for this new expense.

In summary, this Fact Finder wishes to express his appreciation for the thorough presentations that have been made by both sides. In these recommendations are extensive areas of give and take on both sides: Resolution has, to this point, escaped the parties. There is no right or wrong on any of the issues that were presented. There is no absolute way to measure either the fiscal impact on the Board or Community, or on the individual teachers. Such precision was not our aim in reviewing the issues. Both sides have merit on all issues. What is attempted here is the application of a judgment, that it is seriously hoped, will provide a bases for resolution of a very difficult situation.


S. Eugene Bychinsky
Fact Finder

Date: August 22, 1978