

MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

In the Matter between:

MEMPHIS COMMUNITY SCHOOLS

Case No. D94 C-0802

-and-

MEMPHIS EDUCATION ASSOCIATION,
SCCEA/MEA/NEA

Fact Finder: Elaine Frost
Issued: May 29, 1997

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FACT FINDER'S OPINION AND DECISION

Appearances:

For the Employer: Gary Fletcher, Attorney
Juan R. Ballona, Attorney
Doug Pratt, School Board President
Donna Kammerer, School Board Secretary
Jill Tanalski, School Board Member
Joe Burns, School Board Member
Mary George, School Board Member
Harold J. Burns, School Board Member
Nancy Powser, Administrative Assistant

For the Association: Gladys Stablein, Uniserv Director
Clarence Lewis, President
John Bacholzky, Vice President
Lorraine Goeminne, Secretary
Antoinette Lesinski, Treasurer
Darin McNabb, Negotiator
Sharon Cook, Negotiator
Ed Stachura, Negotiator

Also Present: Joe Parrinello, Reporter for the Voice
Laurie Hampton, Observer

Called by the Employer:

Kenneth J. Helinski, Superintendent

Called by the Association:

Pauline LeTarte, Former Chief Negotiator
Mary Zimmerman, Uniserv Director

Memphis Community Schools

INTRODUCTION

This matter was referred by the Michigan Employment Relations Commission pursuant to Public Act 176 of 1939, and the undersigned was appointed as the Fact Finder. As they seek to complete the 1994-1997 successor contract to their 1991-94 Master Agreement, a single issue remains between the Memphis Community Schools ("Employer" or "Board") and the Memphis Education Association, St. Clair County Education Association, MEA/NEA ("Association" or "Association"). That issue concerns the Leave Pay language in Article VII that was first added to the contract in 1977.

A fact finding hearing was held on November 18, 1996 at the St. Clair County Community College in Port Huron, Michigan. The parties were afforded ample opportunity to examine and cross-examine witnesses, to present documentary evidence and to argue their respective positions. Witnesses testified without necessity of oath and both parties were well-prepared. Post-hearing briefs were filed.

COMPARABLE COMMUNITIES

The Memphis School district is located in St. Clair County and was characterized as a district with lower property values, a high millage rate, and taxpayer resistance to increased property taxes.

Each of the parties to some extent relied on comparative data from other school districts. The Board proposed that the Memphis Schools be compared to 19 districts throughout the State which have similar financial and population characteristics,¹ and these are include in Membership Group Code M, (Dept. of Education Bulletin 1014; 1994-1995). Also,

¹ The Board selection criteria of student population (between 700 and 1000) and state source funding (rankings between 100 and 278) resulted in the identification of 24 district. Since the Board was able to secure needed supporting data from 19 of these, it presented those 19 as the comparables.

the Board recognized that two districts in the area of Memphis Schools -- Brown City and New Haven -- are sufficiently similar to the Memphis Schools to be considered comparable. Board information reflected:

| DISTRICT | STATE FUNDING | STUDENT POPULATION | AVERAGE SALARY | LEAVE DAYS Review:R No review:NR |
|--------------------------|---------------|--------------------|----------------|--|
| Athens | \$4,960.35 | 903.90 | \$39,207.27 | 2NR |
| Carsonville-Port Sanilac | \$3,727.52 | 760.29 | \$40,618.99 | 2R |
| Concord | \$4,687.25 | 952.22 | \$41,864.61 | 3NR |
| Deckerville | \$3,806.33 | 989.24 | \$36,804.70 | 3R |
| Dryden | \$4,710.21 | 791.00 | \$45,455.48 | 2NR |
| Eau Claire | \$4,453.54 | 880.48 | \$37,693.76 | 2NR |
| Fulton | \$4,861.35 | 989.00 | \$36,114.04 | 1R 1NR |
| Gobles | \$4,536.44 | 944.83 | \$40,224.98 | 2R |
| Grass Lake | \$4,548.64 | 863.00 | \$45,313.13 | 2R |
| Kingston | \$4,482.54 | 768.00 | \$38,329.77 | 6NR |
| Manton | \$4,411.42 | 936.75 | \$39,177.87 | 3NR |
| Martin | \$4,544.65 | 859.21 | \$36,263.62 | 2NR |
| Morenci | \$4,746.13 | 989.88 | \$40,455.15 | 1R 1NR |
| Morrice | \$4,911.98 | 705.89 | \$40,585.30 | 3NR |
| North Muskegon | \$4,554.74 | 759.00 | \$38,601.27 | 4NR |
| Peck | \$4,241.76 | 573.50 | \$34,209.37 | 2NR |
| Pittsford | \$4,759.73 | 851.83 | \$40,952.53 | 2R |
| Summerfield | \$4,403.51 | 898.27 | \$42,374.72 | 4NR |
| Whiteford | \$4,630.79 | 762.45 | \$41,920.06 | 3NR |
| AVERAGE | \$4,525.20 | 851.51 | \$39,798.24 | 1R 1.7NR |
| MEMPHIS | \$4,686.25 | 958.36 | \$40,452.47 | 12NR |
| Brown City | \$4376.91 | 1163.06 | \$40,435 | 3NR |
| New Haven | \$4759.61 | 1039.7 | \$41,659 | 1R 2NR |

The Association proposed that the Memphis Schools be compared to St. Clair County districts and it also provided certain information as to other districts proximate to the Memphis Schools, outside of St. Clair County. The Association contended that the comparison made in the 1977

negotiations (when the Leave Pay language was added), was a county-wide comparison and, at that time, that the Memphis district was a poor, "in-formula" school district with very low property values, a relatively high millage rate, and taxpayers who were very resistant, if not hostile, to increasing the property tax rate.

The Board disputed the Association's reliance on county-wide districts for comparatives and particularly objected to the comparison of Memphis (with approximately 1000 students) to Port Huron schools, with over 12,000 students; and of Memphis to the East China District which is one of the wealthiest districts in the State, while Memphis is far from wealthy.²

This comparison of leave days for personal days was also provided:

| <u>District</u> | <u>Personal Days</u> | <u>Non-Review</u> |
|------------------------|----------------------|-------------------|
| Algonac | 2 | 0 |
| Almont | 3 | 3 |
| Armada | 3 | 0 |
| Brown City | 3 | 0 |
| Capac | 2 | 2 |
| CPS | 2 | 0 |
| Croslex | 2 | 2 |
| Deckerville | 3 | 0 |
| East China | 3 | 1 |
| Marlette | 2 | 2 |
| Marysville | 3 | 3 |
| Memphis | 12 | 12 |
| Memphis Board Proposal | 3 | 1 |
| New Haven | 2 | 0 |
| Peck | 2 | 0 |
| Port Huron | 2 | 0 |
| St.Clair ISD | 2 | 0 |
| Sandusky | 3 | 2 |
| Yale | 4 | 4 |

COMPARABLE FINDINGS: The fact finder views some but not all of the districts proposed by each party to be comparable to the Memphis District. In that review the fact finder considered three factors which

² Memphis Superintendent Ken Helinski testified that East China is one of the wealthiest districts in the State, and this was undisputed. (The SEV per pupil in East China (homestead and non homestead) totals \$226,378. The comparative SEV figure for Memphis is \$84,993. (1994-1995 figures, Bulletin 1014).

were necessary to a finding of comparability. These factors are, student population, relative funding and proximity. There is no order in these three variables, nor exact percentage values ascribed to each. Instead, each of the factors may be somewhat more or somewhat less present in any given district, but on balance, a combination of the three factors must be present for comparability.

With respect to the 19 districts in Membership Group Code M, as basically followed by the Board, the fact finder concludes that all but four are not comparable due to lack of proximity. The four which are comparable are: Carsonville-Port Sanilac; Deckerville; Dryden and Peck. In addition, both the Board and Association acknowledge that Brown City and New Haven are comparable, and the fact finder agrees because of relative student population, funding and proximity. With respect to the seven districts in St. Clair County aside from Memphis, the fact finder views Port Huron as lacking in comparability due to a far greater student population, and East China as lacking in comparability due to a far greater affluence.³ The fact finder also views the Intermediate School District ("ISD") as lacking in comparability due to its specialized curriculum and staff.⁴ The remaining four St. Clair districts are,

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| DISTRICT | STATE FUNDING | STUDENT POPULATION | AVERAGE SALARY | LEAVE DAYS Review:R No review:NR |
|------------|---------------|--------------------|----------------|--|
| East China | \$3,228.45 | 5083.6 | \$50,619.81 | 2R 1NR |
| Port Huron | \$4526.07 | 12,672.29 | \$44,542.09 | 2R |
| MEMPHIS | \$4,686.25 | 958.36 | \$40,452 | 12NR |

⁴ Nor is there any indication that the ISD was existent in 1977, the apparent basis of the Union's position that it is a comparable.

however, considered to be comparable. (Algonac, Capac, Marysville and Yale). Also considered comparable, based on the three factors, are the following districts in neighboring counties: Almont, Armada, Crosswell Lexington, Marlette and Sandusky.

The resulting 15 comparable districts are:

| | |
|--------------------------|-------------|
| Algonac | Deckerville |
| Almont | Dryden |
| Armada | Marlette |
| Brown City | Marysville |
| Capac | New Haven |
| Carsonville-Port Sanilac | Peck |
| Crosswell Lexington | Sandusky |
| | Yale |

Data for these comparable communities is reflected in the following:

| DISTRICT | STATE FUNDING | STUDENT POPULATION | AVERAGE SALARY | LEAVE DAYS Review:R No review:NR |
|--------------------------|---------------|--------------------|----------------|--|
| Algonac | \$4,289.01 | 2577.1 | \$43,550 | 1R and 2NR |
| Almont | \$4,087.40 | 1356 | \$45,182 | 3NR |
| Armada | \$4,894.36 | 1639 | \$46,326 | 3NR |
| Brown City | \$4376.91 | 1163.06 | \$40,435 | 3NR |
| Capac | \$4,086.97 | 1617.68 | \$43,096 | 2NR |
| Carsonville-Port Sanilac | \$3,727.52 | 760.29 | \$40,619 | 2R |
| Crosswell Lexington | \$3,605.22 | 2381.29 | \$37,099 | 3NR |
| Deckerville | \$3,806.33 | 989.24 | \$36,805 | 3R |
| Dryden | \$4,710.21 | 791.00 | \$45,455 | 2NR |
| Marlette | \$4,598.59 | 1485.5 | \$34,414 | |
| Marysville | \$3,900.34 | 2392 | \$44,870 | 3NR |
| New Haven | \$4759.61 | 1039.7 | \$41,659 | 1R 2NR |
| Peck | \$4,241.76 | 573.50 | \$34,209 | 2NR |
| Sandusky | \$4,334.30 | 1500.39 | \$40,303 | 1R 2NR |
| Yale | \$4,166.19 | 1896.13 | \$42,759 | 4NR |
| AVERAGE | | | \$41,115 | |
| MEMPHIS | \$4,686.25 | 958.36 | \$40,452 | 12NR |

HISTORICAL CONTRACTUAL PROVISIONS ON PERSONAL LEAVE

The parties' first (1970-1973) collective bargaining agreement addressed leave for illness and personal business in Article IX:

- A. Teachers absent from duty because of personal illness or because of illness in the family, shall be allowed full pay for a total of ten (10) days in any school year accumulative at a rate of five (5) days per semester....⁵
- B. There shall be allowed each teacher two (2) days of a personal nature for leave purposes for which he will receive full pay. These are to be arranged for at least three (3) full days in advance except for emergency situations....
- E. The Memphis Education Association, and the Board, will not tolerate teacher abuse of sick leave policy. In cases where abuse suspected, an investigation will be made by the Board and the Association. If the teacher is found guilty of such abuse, he will be required to pay one full days pay for each day found in abuse....
- F. Upon retirement, a teacher shall receive... reimbursement for any accumulated sick leave days....

Except for changes not relevant to this fact finding, this Leave Pay language remained unchanged until the parties' 1977-1978 contract.

Pauline LeTarte, who was chief Association spokesperson for the 1977-1978 contract, testified at the fact finding hearing.⁶ She explained that salaries of Memphis teachers were "very low,"⁷ and the Association negotiators sought "equity in terrible times." The negotiated result, LeTarte continued, was giving teachers more flexibility in leave use, "so at least teachers would have more freedom in our leave arrangements." LeTarte said the parties moved to 12 "leave days," not 12 "personal leave days." And LeTarte agreed that the slang at the time was to call these "MYOBs" or "mind your own business days." She also stressed that teach-

⁵ Deleted from the above are provisions (and from similar provisions in later contracts) are provisions governing probationary teachers, and provisions governing accumulation and allowable total accumulations of leave days.

⁶ LeTarte has retired after a 22-year career as a Memphis teacher. She travelled from her home in Florida to testify at the hearing.

⁷ LeTarte testified that during the preceding contract a new salary structure had been implemented which turned out to be "a disaster." So in 1977-78 they went back to the 10-step pay system.

ers did not need to tell the Board the reasons for the leave days they took, and that these days were justified as "pay for lack of salary."

The resulting 1977-1978 Agreement made changes to Sections A, B and E of the Leave Pay provision which became numbered as Article VII. Section A became:

- A. Tenure Teachers absent from duty because of personal business, personal illness, or disability or because of illness or disability in the family shall be eligible for full pay to the extent of time accumulated in their personal sick-leave accounts. Twelve (12) days shall be added to that account at the beginning of each school year....⁸

Section B became:

- B. Personal business days are to be arranged for at least three (3) days in advance except for emergency situations. Days immediately preceding and following any vacation period may not be used as personal business days. (Except for funerals or by approval of the Superintendent). After five (5) consecutive days or if a pattern of absences is determined, documentation must be provided if requested.

Section E became:

- E. No teacher shall be granted a personal leave day to earn money at another job. The Memphis Education Association and the Board will not tolerate abuse of sick leave policy. In cases where abuse is suspected, an investigation will be made by the Board and the Association.

There have been changes to Article VII since the 1977-78 contract.

Thus, in 1979-80, the first part of Section A was changed to read:

- A. Tenure teachers absent from duty because of illness, personal business, disability or because of illness in the family shall be allowed full pay for a total of twelve (12) days in any school year....⁹

This Section A formulation was included in seven successive (through 1991-1994) collective bargaining agreements. Also in the 1980-81 Agreement, "documentation" in Section B became "medical documentation."¹⁰

⁸ Provisions for probationary teachers and those covering permissible accumulations are not set forth.

⁹ There was no bargaining history evidence for the 1979-80 changes in Section A of Article VII. This change could have substantially changed intentions from full leave bank use at any time, to use of time limited to 12-days per year.

¹⁰ Uniserv Director Mary Zimmerman testified that the 1980-81 change was "housekeeping."

In the 1981-1982 Agreement the "twelve (12) days" in Section A became "twelve (12) leave days." Also in the 1981-1982 Agreement, the Section E language "abuse of sick leave policy" became "abuse of leave policy."¹¹

During the term of the 1991-1994 contract, teachers were provided up to 12 days for sick and/or personal business time; non-emergency use of all 12 days required advance notice. Although, after five consecutive days of absence or a pattern of absences, the Board had the option of requiring medical documentation, it has never required documentation. Nor has the Board ever exercised its Section E right to investigate suspected abuse.

Superintendent Kenneth J. Helinski testified that five days of absence has not been a problem. He said the District instead has had a problem with absences of one, two or three days. These, although not constituting a pattern, have caused concern. And as to these, he said, the Board cannot require documentation and cannot demand to know the purpose for which the leave days were taken.

The Board also provided this summary of the leave day use from 1993-1996:

| <u>Number</u> | <u>Teacher's Explanation</u> |
|---------------|---|
| 57.5 | PERSONAL DAY |
| 44.5 | MEDICAL REASONS |
| 76.5 | NO REASON GIVEN |
| 27 | OUT OF TOWN |
| 16.5 | FUNERAL |
| 11 | FAMILY BUSINESS |
| 4 | WEDDINGS |
| 15 | CHILD RELATED ACTIVITIES |
| 2.5 | FAMILY ILLNESS |
| 4 | COURT DATES |
| 1 | SURPRISE BIRTHDAY PARTY |
| 1 | LONG WEEKEND UP NORTH TO CLOSE UP CABIN |
| 1 | FOLLOW UP TO PREVIOUS PERSONAL DAY |
| 4 | COLLEGE (EMPLOYEE RELATED) |

¹¹ This change has continued up through the current 1991-1994 Agreement.

15 OTHER MISC. REASONS
1 HUNTING (Note: 40 days fall in mid to late November during deer
hunting season.)
281.5 TOTAL DAYS ACCOUNTED FOR

Helinski testified that between 1993 and 1996 40 days were taken around hunting season. And he emphasized that 76.5 leave days were taken for no identified reason, and some were for reasons the Board considers insufficient, such as surprise birthday parties, long weekends and a follow up to a previous personal day.

EVENTS RELATED TO BARGAINING FOR THE 1994-1997 CONTRACT

Bargaining for the 1994-1997 Agreement began on July 8, 1994. The initial Board proposal provided, in part, for a maximum of three personal business days without review "for business and family obligations that cannot be made outside the regular school day." And it provided, "Not more than five (5) teachers will be approved for a personal business leave on any day." The proposal continued that such days "shall not be used for the purposes of personal pleasure, such as travel, shopping, hunting, skiing, sports events, or extended vacation..."¹²

The term of the 1991-1994 contract expired on August 20, 1994.

Helinski testified that, in bargaining, the Association claimed it received the unrestricted leave language to make up for its acceptance of a pay freeze. Helinski said he checked the records because of this assertion and determined that the pay freeze took place 1982-1983, which was well after the change in leave pay language.¹³

¹² The Union's official position at that time and thereafter, through to fact finding, has been "status quo."

¹³ Helinski said it was not until fact finding that the Union stopped claiming the pay freeze was the reason for the change to 12 unrestricted days.

The Association also claimed that the Board changed contentions between the time of bargaining and the fact finding. Thus it maintained that during negotiations the Board claimed a change in current language was needed to insure accurate record-keeping. And they also argued that Memphis Schools had a shortage of substitute teachers and so it was necessary to limit the number of teachers out in one day. But, the Association pointed out, neither of these issues was presented at fact finding and neither was supported by any evidence.

The Association also submitted that the Employer rejected a "Return from Leave" form that it offered, on which teachers would indicate the reason for the use of leave days upon their return. The Employer also rejected a percentage limit on the number of teachers who could use prearranged personal leave days at any one time. And, the Employer rejected a "perfect attendance incentive" that would compensate teachers \$300 for each term of perfect attendance.

Following picketing and other protests by teachers over stalled contract negotiations, 31 of 54 Memphis teachers called in on February 8, 1995, stating they would not report to work; 34 teachers called in that they would not report to work on March 28th; 36 teachers did the same on March 29th. Schools had to be closed on each of these three days, teachers were docked and those three days were made up at the end of the school year.

Helinski testified that teachers expected to be paid for these three days of "blackboard flu" as "personal days," but they were not because they had not provided the requisite three-day notice. Helinski added that if teachers had given that advance notice, he saw nothing that could

be done to protect the District from having to pay teachers for leave days, cancel class days and suffer the loss of state funding for those days. Helinski explained that because of these three days of "blackboard flu" the Board became united in its resolve to change Article VII, and that this issue became its first priority.

The Board's Proposal on Article VII, dated August 14, 1995, provides for "9 sick days; 2 personal days; 1 personal/non-review day, Raise cap to 210 days accumulation; unused P.B. days accumulate to individual accounts; maximum 5 teachers out per day for district."

Approximately fifteen bargaining sessions, as well as about six sessions with a state mediator, were held in efforts to resolve the terms of the 1994-1997 Agreement. The parties reached accord on all issues except the Leave Pay provision and this, in part, included salary increases of 3% for each of the three years of the new contract.

A Petition for Fact Finding was filed by the Association on August 14, 1996.¹⁴ The fact finding hearing was held on November 18, 1996. The last brief was received by the fact finder on January 21, 1997 and, due to delays for personal reasons on the part of the fact finder, this decision is issued on May 29, 1997.

OTHER RELEVANT INFORMATION

The Association provided base salary data for 1993-94, comparing the economic status of Memphis teachers to teachers in other County districts:¹⁵

¹⁴ The Petition indicates that there are "58-60" teachers employed by the Memphis District.

¹⁵ The Union explained that 1993-94 was the last year for which figures were available.

| Year | Algonac | Capac | East China | ISD | Marysville | Memphis | Pt Huron | Yale |
|------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| 0 | BA:\$23,550 MA:\$26,183 | BA:\$22,966 MA:\$25,263 | BA:\$27,985 MA:\$31,018 | BA:\$24,611 MA:\$26,941 | BA:\$24,625 MA:\$26,992 | BA:\$23,093 MA:\$24,996 | BA:\$22,758 MA:\$24,820 | BA:\$24,795 MA:\$27,718 |
| 1 | BA:\$25,236 MA:\$28,053 | BA:\$24,734 MA:\$27,058 | BA:\$30,793 MA:\$33,677 | BA:\$26,621 MA:\$29,130 | BA:\$26,611 MA:\$29,138 | BA:\$24,834 MA:\$26,744 | BA:\$25,609 MA:\$27,872 | BA:\$25,979 MA:\$29,073 |
| 9 | BA:\$40,623 MA:\$44,916 | BA:\$38,878 MA:\$41,428 | BA:\$47,882 MA:\$52,570 | BA:\$42,690 MA:\$46,668 | BA:\$44,853 MA:\$48,939 | BA:\$40,828 MA:\$43,892 | BA:\$40,980 MA:\$44,540 | BA:\$37,537 MA:\$41,845 |
| 10 | BA:\$43,046 MA:\$47,523 | BA:\$41,904 MA:\$44,556 | BA:\$51,280 MA:\$55,996 | BA:\$44,696 MA:\$48,864 | | | BA:\$43,168 MA:\$46,926 | BA:\$40,188 MA:\$44,913 |

Based on this data, the Association pointed out that:

1. At the beginning BA step Memphis ranked 6th out of the 8 county districts.
2. At the beginning MA step Memphis ranked 7th out of the 8 county districts.
3. At the BA year 10 step, Memphis ranked 5th out of 8.
4. At the MA year 10 step, Memphis ranked 6th out of 8.

The Association contended that continuing low economic status (as was the case in 1977) still exists between Memphis and the other County districts.

Based on financial data for districts in St. Clair County, the Association moved a hypothetical teacher through the steps in each district to compare the financial impact after a 30-year career. Its figures revealed:¹⁷

| <u>District</u> | <u>Career Earnings</u> |
|-----------------|------------------------|
| Est China | \$1,545,946 |
| ISD | \$1,387,328 |
| Marysville | \$1,383,386 |
| Port Huron | \$1,360,098 |
| Algonac | \$1,359,609 |
| Capac | \$1,287,921 |
| Memphis | \$1,242,895 |
| Yale | \$1,232,164 |

¹⁶ Union data includes the years 2 through 8 as well, but that additional data is not included for sake of brevity.

¹⁷ Under the Union's hypothetical, the teacher starts at BA step 1 and stays on BA level for 3 years. Beginning in year 4, teacher earns sufficient hours to move to BA + column, and stay there for the next 3 years. Beginning the 7th year, teacher moves to MA column and stays there for 24 years. No longevity payments were included in this calculation. (Memphis has a step 12 in its grid, many other districts have only 10, or some 11).

The Association contended that a thirty-year "career" earnings analysis illustrates that a Memphis teacher would earn over \$300,000 less than his or her East China counterpart.¹⁸

The Board disputed the relative low economic status of Memphis teachers and pointed out that Memphis received only \$161.05 per student more than the average for the 19 comparable districts, and they were paid on average \$654.23 more than the average of the 19 districts.¹⁹ The Board also contended that Memphis teachers received good salary increases after the 1982-1983 freeze, providing the following information on raises in the Memphis District since 1970:

| SALARY TRACK FROM 1970-1997 BA(1) SALARY | | |
|--|--------------|------------------------|
| <u>YEAR</u> | <u>BA(1)</u> | <u>INCREASE</u> |
| 1970-1971 | 7,500.00 | |
| 1971-1972 | 7,875.00 | 5% |
| 1972-1973 | 8,325.00 | 5.71% |
| 1973-1974 | 8,425.00 | 1.2% |
| 1974-1975 | 8,846.25 | 5% |
| 1975-1976 | 9,351.75 | 5.71% |
| 1976-1977 | NO DATA | |
| 1977-1978 | 9,700.00 | 3.71% |
| 1978-1979 | NO RECORD | 23.64% OVER NEXT 3 YRS |
| 1979-1980 | NO RECORD | |
| 1980-1981 | 11,993.00 | |
| 1981-1982 | 13,012.00 | 8.5 % |
| 1982-1983 | 13,012.00 | FREEZE |
| 1983-1984 | 13,012.00 | STEP ONLY 7.22% |
| 1984-1985 | 13,532.00 | 4% + STEP |
| 1985-1986 | 14,479.00 | 4% + 3% AT CHRISTMAS |
| 1986-1987 | 14,913.00 | 3% + 4% AT CHRISTMAS |
| 1987-1988 | 16,286.00 | 4% + STEP |
| 1988-1989 | 17,589.00 | 8% + STEP |
| 1989-1990 | 18,820.00 | 7% + STEP |
| 1990-1991 | 19,949.00 | 6% + STEP |
| 1991-1992 | 20,946.00 | 5 TO 6.5% + STEP |
| 1992-1993 | 21,993.00 | 5 TO 6.5% + STEP |
| 1993-1994 | 23,093.00 | 5 TO 6.5% + STEP |
| 1994-1995 | 23,786.00 | 3% ON TABLE |
| 1995-1996 | 24,499.00 | 3% ON TABLE |
| 1996-1997 | 25,234.00 | 3% ON TABLE |

¹⁸ The fact finder notes that earlier the list of comparable communities excluded East China.

¹⁹ The fact finder notes that earlier the list of comparable communities excluded some of these 19 districts.

SALARY COMPARISON TOP END 2ND MASTERS STEP (21) 1985-1994

| <u>YEAR</u> | <u>2ND MA(21)</u> | <u>INCREASE</u> |
|-------------|-------------------|-------------------------------|
| 1985-1986 | 29,881.00 | 4% INCREASE + 3% AT CHRISTMAS |
| 1986-1987 | 30,777.00 | 3% INCREASE + 4% AT CHRISTMAS |
| 1987-1988 | 33,608.00 | 4% + STEP |
| 1988-1989 | 36,297.00 | 8% + STEP |
| 1989-1990 | 38,838.00 | 7% + STEP |
| 1990-1991 | 41,168.00 | 6% + STEP |
| 1991-1992 | 43,844.00 | 5% TO 6.5% + STEP |
| 1992-1993 | 46,694.00 | 5% TO 6.5% + STEP |
| 1993-1994 | 49,729.00 | 5% TO 6.5% + STEP |
| 1994-1995 | 51,221.00 | 3% ON TABLE + STEP |
| 1995-1996 | 52,758.00 | 3% ON TABLE + STEP |
| 1996-1997 | 54,341.00 | 3% ON TABLE + STEP |

PERTINENT CONTRACT LANGUAGE (1991-1994 Agreement)

ARTICLE VII LEAVE PAY

- A. Tenure teachers absent from duty because of illness, personal business, disability or because of illness in the family shall be allowed full pay for a total of twelve (12) leave days in any school year....
- B. Personal business days are to be arranged for at least three (3) days in advance except for emergency situations. Days immediately preceding and following any vacation period may not be used as personal business days. (Except for funerals or by approval of the Superintendent). After five (5) consecutive days or if a pattern of absences is determined, medical documentation must be provided if requested.* * * * ²⁰
- E. No teacher shall be granted a personal leave day to earn money at another job. The Memphis Education Association and the Board will not tolerate abuse of leave policy. In cases where abuse is suspected, an investigation will be made by the Board and the Association.
- F. Upon retirement, a teacher shall receive substitute's wages at the time of such retirement for all accumulated leave days in his account...²¹

POSITION OF THE EMPLOYER

The Employer contends that Article VII should be changed to allow teachers (9) sick days, (2) personal days with review, and (1) personal day without review. It argues that the Leave Pay provision is inconsistent with its need for accountability from teachers and its responsibility to students, parents and the community for continuity of instruction.

²⁰ Deleted are provisions on the sick leave bank ("C") and yearly audit ("D").

²¹ Provisions for decreasing this amount if a teacher does not retire in the first year of retirement eligibility and provisions for those leaving the district before retirement, are also provided in Section F.

The Board points out that the "Summary of Personal Days" shows that Memphis teachers took 281.5 days for non-emergency, non-sick leave days from Autumn of 1993 through Spring of 1996; and the overwhelming majority of these days were taken for recreational or vacation-oriented functions. Particularly, the Board notes, 40 days were used from November 15 to November 30 during hunting season, so 14% of the leave days were taken during 5% of the school year. This use, the Board maintains, constitutes misuse of leave days which were intended for illness and legitimate personnel business which cannot be completed outside of the work day. This lack of accountability, the Board adds, is aggravated by the teachers' ability to accumulate up to 194 personal days (Article VII A), and the events in February and March, 1995, when "Blackboard Flu" closed the Memphis schools on three separate days. Although this concerted activity was a "strike" under Michigan law (MCLA 423.201), the Board notes that if the teachers had given the requisite three days advance notice, it would have been in the intolerable position of having to cancel school, lose state funding for those days, and then pay teachers for those days.

Further, the Board contends that the Association's argument that the current language allows investigation of suspected abuse is misplaced since Board summaries of actual use demonstrate misuse of leave days which cannot be challenged under current language.

Next, the Board argues that none of the comparable school districts provide language even remotely similar to Article VII. Thus, of the 19 comparative districts, five allow 2 personal days with restrictions, four allow 2 days without restriction, four allow 3 days without

restrictions, two allow 1 day with restrictions and 1 without. The two least restrictive districts, Kingston and North Muskegon, allow 6 unrestricted days and up to 4 unrestricted days, respectively. On the average, the Board continues, the 19 comparable districts grant their teachers 1 restricted day and 1.7 unrestricted days. And the districts in St. Clair County and nearby areas also fail to show any leave provisions comparable to the Memphis formulation, as none of their teachers enjoy the freedom to take time off that the Memphis teachers have. The District further points out that its proposed language would continue to put Memphis teachers above average on use of leave days, (ie 2 days of restricted use and 1 day without review).

The Board next discounts the Association's position that loose leave language should be continued to make up for pay disparity of almost 20 years ago. Assuming disparity ever existed, the Board argues, it no longer does because Memphis teachers are paid more than the statewide class average of similarly sized districts.²² Also, while the statewide average salary increase is 2.74%, the District's proposed settlement provides for an annual 3% increase. Therefore, if there is any remaining disparity in teacher salaries between Memphis Community Schools and comparable districts, the disparity favors Memphis teachers.

The Board next argues that the Association assertion that the leave language was changed to 12 unrestricted days to make up for a pay freeze, is discredited. Thus, the only salary freeze occurred in 1982-1983 and the leave pay language changed in 1977-1978. Moreover, since that

²² The Board points out that with BA Minimum salaries, Memphis pays \$500 less than the statewide class average; but in all other categories, Memphis teachers are paid more than the statewide class average.

freeze, 12 years of significant raises have erased its effects. Thus, Memphis teachers have experienced annual salary increases no less than 4 percent, including 8 percent in 1988-1989, 7 percent each in 1985-1986, 1986-1987 and 1989-1990, and 5 to 6.5 percent in each year from 1991-1994.

The Board concludes that even if teachers in 1977 were given time off work in lieu of wages, that rationale can no longer be supported in light of current educational needs and community demands. It urges the fact finder to adopt its proposal as the only one consistent with common sense and the best interests of the district and its students.

POSITION OF THE ASSOCIATION

The Association contends that current leave day language must be maintained because teachers obtained this benefit as a trade-off in the 1977-78 bargaining for the lack of a wage increase, because the conditions that prompted the parties to agree to this benefit have not significantly changed, and because the district has no legitimate reason to upset this 19-year practice: lacking, as it does, evidence of abuse or of other "problems" due to the current language.

First, the Association argues that the low economic position which existed in 1977-78 between Memphis teachers and other teachers in St. Clair County, and which caused the change to 12 unrestricted leave days, continues to exist today. Thus, for 1993-94, Memphis teachers were paid far less than their counterparts as demonstrated by these comparisons:

1. At the beginning step of the BA lane, Memphis ranked 6th out of the 8 county districts.
2. At the beginning step of the MA lane, Memphis ranked 7th out of the 8 county districts.
3. At the BA year 10 step, Memphis ranked 5th out of 8.
4. At the MA year 10 step, Memphis ranked 6th out of 8.
5. Beginning teachers in Memphis made over \$6,000 less than their counterparts in East China.
6. Career teachers in Memphis, at step 10 of the Masters level, make almost \$9,000 less than their counterparts in East China.

7. Under the 30-year comparison a teacher in Memphis would earn over \$300,000 less than his or her East China counterparts.

The Association reasons that Memphis teachers continue to be one of the lowest paid teachers in the area, and that continuity supports extension of the 19-year old leave pay language.

The Association agrees that the leave day language in the Memphis contract allows for more flexibility than other contracts in the county or probably around the state. But, that liberal leave day provision was not implemented on the basis of comparison, so it is inherently unfair for the Board to insist that Memphis teachers be required to live with a leave day provision like those of other districts.²³

Next, the Association argues that there is no proof teachers have abused the leave day provision. The Board's Summary of Personal Days shows that less than five days per teacher were used during the period from 1993-1996, amounting to less than two per year. The Association concludes that this low usage contradicts the existence of abuse of the leave day language.²⁴ Instead, it argues, the Board's documentation proves that Memphis teachers are highly dedicated to the education of students. (The Association stresses that teachers understand that absences are restricted to those uses "for illness, personal business, disability or illness in the family," and honor those requirements even though they are not required to state a specific reason for any absence). The Association further argues that the Board has failed to show that

²³ During a recent informational picket, some of the Memphis teachers carried a sign that said, "Give me the same salary as the surrounding districts and I'll take their leave language, too!" To that, the Association maintains, one can only add, "Amen."

²⁴ The Association contends it requested documentation of abuse during the course of bargaining and throughout these proceedings, but the Board did not provide any.

absenteeism by Memphis teachers is higher than for other teachers around the county or state. Nor has it shown that other districts with restrictive leave day language have not experienced "chalkboard flu."

Next the Association contends that the contract permits the District to investigate and address any abuse. Thus, Article I contains a broad "management rights" clause including the right "to the executive management and administrative control of the school system...and the activities of its employees;" Article II, Section B states that after five consecutive days or if a pattern of absences is determined, the district can require medical documentation; Article VII, Section B contains limits on use of leave, including advanced notice requirements, and limit on days immediately before or after vacation periods and Article VII, section E states that "...The Memphis Education Association and the Board will not tolerate abuse of leave policy. In cases where abuse is suspected, an Investigation will be made by the Board and the Association." Since, the Association argues, the District has failed to ever conduct an investigation under their existing procedures, it follows that personal leave abuse has not in its opinion occurred.

The Association also counters Board arguments that it needs "control" and "accountability." These, the Association insists are unmeritorious because:

- 1) The District already has significant "control" under the current contract language but has never exercised the "control" which already exists; and

- 2) It is unlikely that the Board's proposal or any new contract language could prevent "chalkboard flu." (Moreover, since April of 1995,

P.A. 112 became law and imposes substantial fines for "strikes" and this arguably provides the Employer an remedy if there was a determination of a strike by its employees); and

3) The Board rejected several offers made by the Association in negotiations in an attempt to address the District's stated concerns.

In conclusion, the Association stresses that teachers in Memphis have been without a contract since August 20, 1994. Labor relations in the district are at an all time low and the community is becoming increasingly weary over the lack of a settled labor agreement in the district. A recommendation that erodes the leave day language would serve to further agitate the teachers and would not produce any positive results for the school district. Thus, the Association urges the fact-finder to recommend that the existing language be continued without modification.

ANALYSIS

Article VII allows Memphis teachers to use up to 12 personal business leave days each year, without explanation of their activities, and with the sole requirement that they give three days advance notice of leave days. The Board is steadfast that continuation of current language cannot be justified; the Association is equally steadfast that modification of current language cannot be justified. Given these positions, the parties have been unable to achieve mutual goals of resolving the 1994-1997 Agreement and creating a more productive interaction for the future.

A number of underlying considerations led the parties to their present positions and dispute. In the fact finder's view, resolution must take these countervailing considerations into account.

First, the Leave Pay provisions in the Memphis Schools (Article VII) are unique. This language has a unique bargaining history reflecting that the leniency of allowing up to 12 days as leave days was intended as an alternative form of compensation. This unique background also includes the fact that the Board lived with the current formulation of Leave Pay for 19 years and has, for the first time in the current negotiations, taken the position that change is essential.

Because of this unique background, comparison between Article VII procedures for Memphis teachers and the leave provisions in contracts for other districts is not seen as relevant: only in Memphis was there the leniency which has been the hallmark of the Memphis teachers' leave provisions, and only in Memphis did the bargaining background specifically create that leniency in the place of improved wages.

Because of this unique background, the fact finder thinks that **Association interests in maintaining an alternative form of compensation for its membership and in maintaining lenient access to personal leave use are reasonable.**

Second, Memphis teachers are not faced with the dilemma of the bargain-ers in 1977 who had to seek "equity in terrible times." The fact finder is not persuaded that the dire financial straits of Memphis teachers in 1977 are reflected in the present state of affairs. Wages paid to Memphis teachers fall behind the average, but not far behind, in relationship to teacher wages in comparable communities.²⁵ Moreover, since the 1982-1983 freeze on Memphis teachers' wages, percentage increases

²⁵ The average Memphis salary of \$40,452 lags \$663 behind the average of \$41,115. (There may, however, be greater distinctions, to the advantage or disadvantage of Memphis teachers, at certain points on the comparison of the salaries grids).

have been substantial. These combined economic factors cause the fact finder to reject the notion that no change can be made to Article VII §A because Memphis teachers are as far behind now on wages as they were in 1977.²⁶

Third, Current Leave Pay provisions pose a threat to District operations and continuity of instruction. Regardless of the likelihood or feasibility of teachers coming down with "blackboard flu" in the future, the fact finder thinks that combined use of leave time (whether combination is intentional or unintentional), jeopardizes school operations. Thus, for reasons which could amount to vacation-like activities, two or more teachers could decide to exercise their leave taking rights at the same time, forcing the District to find multiple substitutes to cover assignments or, if too many leave days coincide, forcing the District to close school, pay leave pay and lose state funding for the day(s) of shutdown.

Current leave pay language provides considerable uncertainty for the Board because there is no minimum number of teachers who can be out on a given day, and because there is little practical limit on the number of days a teacher can take as leave.²⁷ Indeed, with up to 12 days as personal leave, some teachers may be tempted to go on coordinated hunting trips or on any number of other types of outings.

²⁶ It is not possible, of course, without comparative data from 1977-78, to know exactly what the relative financial status of Memphis teachers was in 1977 as compared to the present time.

²⁷ No one suggests that teachers take any where close to 12 personal leave days a year, so for all practical purposes a teacher will have "reserve days" which can (given advance notice) be taken off for this reason. (Of course, other reasons of illness, funeral leave, etc could use up days of the teacher's allotment, and teachers will understandably hold back unneeded days for unexpected events).

Combined use of leave days was not considered in 1977; the evidence shows that the intent was to provide individual use of leave days as alternative compensation. The first time coordinated leave use took place was in February and March of 1995. Those events understandably concerned the Board due to their apparently concerted nature; but any combined use of leave time, even absent a labor relations aspect, could have been equally threatening to District operations.

The fact finder concludes that Board concern over interruptions of the educational process due to combined use or abuse of current leave pay provisions is reasonable.

Fourth, the 1994-1997 Agreement is an appropriate time to modify Article VII. The fact finder notes that the Board's responsibility to fulfill rightful demands of students, parents and community to provide the best possible education for district children, is greater now than it was 19 years ago. Indeed, as an example of how much things have changed, the fact finder thinks it would be unthinkable for the present Board -- if faced with a financial situation like the one the Board and teachers faced in 1977 -- to agree to an open-end arrangement such as found in Article VII §A for leave time, which would create unknown costs and unknown operational impact for years to come.

Further, the Association has at least begrudgingly recognized that modification of Article VII may be necessary. Thus, in efforts to reach accord on the 1994-1997 Agreement, the Association was willing to modify Article VII to include a "Return from Leave" form on which teachers would indicate the reason for the use of leave days upon their return, or a percentage limit on the number of teachers who could use prearranged

personal leave days at any one time, or a "perfect attendance incentive" that would compensate teachers \$300 for each term of perfect attendance.

Fifth, current leave pay language provides more leave time than teacher realistically need for personal business. Up to 12 unrestricted days are currently provided to teachers, yet both parties agree that in the three years from 1993 to 1996 the average use of personal leave was just under two days per year.²⁸ The Association, moreover, cites this figure as proof that teachers are responsibly limiting their use of personal leave time to very modest levels. The Association and Board obviously disagree over the conclusions to be gleaned from the data on personal leave use,²⁹ but the fact finder thinks the data clearly reveals that access to 12 leave days is not essential to the ability of Memphis teachers to attend to their personal business needs.

CONCLUSIONS & RECOMMENDATIONS

The fact finder has reached conclusions based the considerations identified above, which arose out of review of the record. The unique background of the 12 unrestricted leave days -- in the sense that this has been a long-term and lenient benefit and in the sense that this benefit was an alternative form of compensation -- was taken into account. Because of these considerations the recommendation includes three unrestricted days -- a level which exceeds the actual, average Memphis teachers' use by more than one day per year. (These three days shall be subject to the same provisions as the 12 leave days currently are).

²⁸ See the summary of the leave day use from 1993-1996 table, starting on page nine.

²⁹ For example, the Board clearly cites the reasons given in this data (and the lack of reasons in many cases) as evidence of misuse and abuse of personal business leave.

Further, the recommendation includes an incentive payment for each personal leave day that is not used.

The particular recommendation for incentive pay is that, at the end of each school year, each teacher receive an amount equal to 30% of that teacher's leave day pay for each unused day of personal leave. As an estimation of what this amount would be for the "average" Memphis teacher, the fact finder begins with the average wage of \$40,452, divides by 186 for the per day equivalent of \$217 and then takes 30%, which comes to about \$65. Thus there would be approximately a \$65 bonus per leave day for the "average" teacher for each unused personal leave day.³⁰

Next, the fact finder's recommendation takes into account the Board's exposure under current language to operational disruption if teachers use leave day in a fashion where many are absent on the same day. This concern has resulted in the recommended reduction from 12 to three personal leave days. It also resulted in the added recommendation to limit the number of teachers who can take personal leave on any given day to five. Finally, this concern led to the recommendation to lower to three consecutive days the point at which the Board may require documentation -- this being viewed as a guard against possible abuse of sick time to counteract reduction in the number of personal leave days.

³⁰ In arriving at the incentive pay recommendation the fact finder has considered that the cost of a teacher's taking a personal leave day is: 1) payment of 100% of the teacher's salary as leave pay, plus 1) payment of the substitute teacher's wages, plus 3) the education cost of loss of continuity in the classroom. The new provisions under the 1994-1997 leave pay provisions, assuming adoption of the above formulation, would be 30% of the teacher's one day salary plus the cost of one days substitute pay (at the time of retirement). (Article VII, §F).

FACT FINDER'S DECISION

The fact-finder concludes that the following changes to Article VII (Leave Pay) of the 1994-1997 Agreement will address the legitimate concerns of both parties and provide a reasonable resolution of the outstanding dispute:

1. Article VII §A of the contract should be changed to provide nine (9) sick days and three (3) personal business days with out review.
2. Not more than five (5) teachers should be permitted to take personal business leave on any given day.
3. Teachers should be compensated at the end of each school year for any of their three personal leave days which remain unused. This incentive payment shall amount to 30% of the teacher's leave day pay.
4. Article VII §B should be changed so that the Board may investigate after three (3) or more consecutive leave days.

Dated: May 29, 1997
Grosse Pointe Park, Michigan



ELAINE FROST, Fact Finder