

BY APPOINTMENT OF

THE

EMPLOYMENT RELATIONS COMMISSION
STATE OF MICHIGAN

10/14/69

1969
David H. Heilbrunn
FF
169

In the Matter of Fact Finding Between:

MONTROSE EDUCATION ASSOCIATION

-and-

MONTROSE COMMUNITY SCHOOLS

REPORT

Introduction

A one year Agreement between these parties expired June 30, 1969. Negotiations for a new Agreement have resulted in impasse as to economics and 5 other issues.

Based on the Association's application for Fact Finding, a hearing was held at the High School on October 6, 1969.

I. - Agency Shop

The expired Agreement provided for payroll deduction of membership dues to the Association, MEA and NEA. Article I D. was related to this "check-off" clause and read as follows:

"Teachers who do not make the above authorization (ARTICLE I, Section C) shall sign and deliver to the school business office an authorization for payroll deduction of an assessment equal to the local association dues but not to exceed \$15.00 per year. The Association shall be notified by April 30 of all teachers not submitting an authorization for payroll deduction of the above amount.

"In case of non-payment or failure to sign an authorization the Board shall notify such teachers of the termination of their employment at the end of the current school year, and such teachers shall not be rehired. This notification shall be given 60 days prior to the end of the school year."

The Association proposes that the following language replace the first paragraph of Article I D.:

"Teachers who do not make the above authorization (ARTICLE I, Section C)

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"shall sign and deliver to the school business office an authorization for payroll deduction equal to membership dues or assessment of the Association, Michigan Education Association and National Education Association upon such conditions as the Association shall establish. The Association shall be notified by the last Friday of October, 1969 of all teachers not submitting an authorization for such payroll deduction of the above amount."

The Association contends that the Montrose District is situated in a union-oriented community and that it is a proper application of "financial responsibility" to ask that all teachers represented by the Association share in the cost of such service.

The Board opposes continuation of an agency shop clause. It contends that last year's experience with a qualified agency shop clause was unsatisfactory because of the change in local Association dues and the failure of teachers paying only this equivalent to enjoy full privileges of membership.

The tradition in Montrose is for 100% membership and the indication last year is that all teachers were on check-off, equivalency authorization or paying local dues directly to the Association. For the 1968-69 school year 10 districts of Genesee, Lapeer and Saginaw counties had agency shop and the subject is being actively negotiated in Chesaning for the current year.

Court decisions in this state are strongly favoring agency shop. In Smigel vs. Southgate Community School District, Wayne County Circuit Court Civil Action No. 118,812, decided November 22, 1968, Judge Foley stated:

"The claim that an agency shop provision violates statutory law in that it forces one to join a union, and is discriminatory, is without merit. Such provision in an agreement serves the purpose of allocating indiscriminately the cost of representation for collective bargaining among all those participating in the benefits received. Such a provision eliminates the 'free riders'. Roberts' Dictionary on Industrial Relations (1966)."

In Nagy vs. City of Detroit, Wayne County Circuit Court Civil Action No. 123,642, decided April 24, 1969, Judge Piggins stated:

"The more logical rationale behind the agency shop outweighs the more emotional arguments of the opponents.

"To bargain collectively and to administer details of a collective bargaining agreement properly, costs money. In all fairness who ought to bear these costs? All who benefit. All whose lot is improved thereby. All for whom the certified bargaining agent labors. This is and always has been the accepted democratic way. No member of a bargaining unit should expect a 'free ride' and to compel the costs to be borne only by union members, thus permitting non-members to benefit without assuming an equitable proportion of the costs could be fraught with great dangers."

Further court cases supporting the principle of agency shop are Board of Education of the City of Inkster, 263 GERR F-1 (September 23, 1968) AND City of Warren vs. Local 1383, International Association of Fire Fighters, Macomb County Circuit Court Civil Action No. S 67-33111; 68 LRRM 2977.

In addition the State Tenure Commission, in a case arising in Saginaw, affirmed the enforcement of agency shop by a divided vote.

Upon consideration of all the facts here involved, I believe the sharing of the expenses of representation by all members of the bargaining unit is both proper and desirable. On this issue I recommend that the Association's proposal be adopted.

II. - Professional Responsibility

The expired Agreement provided, in Article IV D., that:

"In accordance with school law, teachers shall be released from regular school duties to attend M.E.A. meetings at least two days in each school year, and no extra-curricular activities or coaching will take place during the regular school hours. Also, in accordance with school law, teachers not in attendance at these sessions shall not be paid for these days. Attendance at the meetings will be verified by a procedure agreed upon by the administration and the Association before the start of these sessions."

The Association proposes that the following language replace this provision:

"To facilitate professional growth, two released time one-half day in-service training sessions shall be held in the Montrose Community Schools each semester. These sessions shall be scheduled by the Administration and jointly planned by the Administration and the Association. In the event that M.E.A. regional meetings are scheduled for the spring semester, teachers shall be released one-half day to attend this meeting in place of one of the spring in-service training sessions."

The Association contends that use of in-service training promotes professional growth, upgrades the quality of education and tends to strengthen cooperation between teachers and administrators.

The Board proposes to drop the subject noting that the tentative calendar for the District has 180 attendance days and 184 duty days. The Board prefers to avoid 1/2 day sessions and dropping below the 180 day minimum requirement. It contends that 6 "early release" days are already in the proposed calendar and that full-fledged in-service training could be accomplished on weekends or during school holiday periods.

This subject arises because of the change in state law under which the former conference days are abolished. This activity, commonly termed "MEA days", was attended by teachers each fall in past years. The MEA plans to offer workshop training for which the Association seeks to have its members excused.

The fact that the county school calendar does not provide for in-service days is not controlling. The negotiations here underway are between this Association and this District and the Association's proposal is currently in a permissive area to which the Board could agree. However, the Board opposes this proposal and I am not convinced it is wrong. While salutary purposes are present as to in-service training and reportedly the privilege is being established for the Chesaning teachers, I am not persuaded it need take place with the scope of excused time sought by the Association. Presumably personal business time would be available for this purpose to those teachers who felt highly interested in attending particular workshops not scheduled outside the school day. On this issue I recommend that the Board's position be adopted.

III. - Substitutes

The expired Agreement provided, in Article V H., that:

"Substitute teachers in special areas. In the elementary grades, substitute teachers shall be hired to teach in the absence of teachers in special areas, if possible, (areas such as music, physical education, art, etc.)"

The Association proposes to delete the words "if possible" from this language. The Board proposes to hire substitutes for all areas of the elementary grades " . . . if a qualified substitute is available".

The Association contends that the special subjects should be treated the same as general classroom needs. It notes that elementary teachers have assumed responsibility for students during the unreplaced absence of special subject teachers and without extra pay as is the case when high school teachers relinquish their conference period.

The parties differ primarily as to language on this point. While capable substitutes are always preferable, teachers at the elementary level are well equipped to cover the absence of a special subject teacher. The variation between elementary and high school, as to additional compensation for such coverage, is based largely on the fact that older students are involved and the more demanding, sophisticated content of the high school courses. In reaching my conclusion here I am influenced by the Board's proposal on pay for substitutes (to be discussed below) and my belief that the recommended improvement in basic salary schedule provides recognition for occasional professional demands beyond the ordinary. Finally the Board concedes that the matter of utilization of substitutes is subject to the grievance procedure if an unsatisfactory condition should occur. On this issue I recommend that the Board's position be adopted.

IV. - Business Days

The expired Agreement provided, in Article X C., that:

"Each year every teacher shall receive two (2) days for personal business and ten (10) days sick leave of which one (1) day will be contributed to the common bank. Teachers shall be entitled to an unlimited accumulation of the unused portion of their sick leave days each year. Unused personal business days shall be accumulated as part of the sick leave."

The Association has, late in the course of negotiations, proposed that these days be allowed to accumulate to three (3) if unused. The Board proposes continuation of present language.

The Association contends that experience has shown 3 personal business days might be needed in a school year and its proposed change would discourage premature, unnecessary use. The Board notes that to the extent this proposal is related to a granting of 3 days personal business to the custodians employed by the District, effective July 1, 1969, it should be understood this was done because of the modest pay increases in the range of 5% sought by that group.

I have had little information advanced that would justify the change sought by the Association. Furthermore, a rather elaborate basis for "Leave of Absence with pay chargeable against the teacher's allowance" was available for miscellaneous purposes under Article XI C. of the expired Agreement and

will presumably be continued into this school year. In any event I believe pure personal business needs are adequately satisfied under the existing clause. On this issue I recommend that the Board's position be adopted.

V. - Arbitration

The expired Agreement contained a Professional Grievance Procedure of 4 levels culminating in the privilege of transmitting a grievance not satisfactorily resolved to the State Labor Mediation Board.

The Association proposes that Level Five be added as follows:

"If no acceptable decision is reached by the use of the previous levels the grievance shall be submitted by arbitration before an impartial arbitrator selected by the two parties. If the two parties cannot agree as to the arbitrator, he shall be selected by the American Arbitration Association in accord with its rules which shall likewise govern the arbitration hearing. The Board shall not be permitted to assert in such arbitration any ground or to rely on any evidence not previously disclosed to the Association. The Arbitrator shall not have the power to alter, add to, or subtract from the terms of the master contract. Cost of such arbitration shall be paid equally by the Board and the Association."

The Association contends that the technique of arbitration provides an amicable resolution of disputes in a manner beneficial to the continued working relationship between teachers and the Board.

The Board contends that since a grievance has never been filed in this District it is premature to consider having an arbitration clause and that such is not tested and proven in public employment. The Board's position reads, in part:

"The board would in truth be giving up a prerogative it now has, that of being high on the level of finding a solution to any grievance."

Of the 27 districts in Genesee and Lapeer counties, 19 had arbitration in their 1968-69 contracts. Although Attorney General's Opinion No. 4578, dated May 26, 1967, advised against the legality of arbitration in school contracts, the courts of this state have since uniformly upheld the theory and implementation of arbitration clauses in school and public employment. In general binding arbitration has been found a satisfactory means of amicably resolving contract disputes and it is predominant use in the locality. The Association's proposed language is typical in terms of the procedure for arbitration, express limitation on arbitral authority and cost sharing. The prohibition as to "surprise" evidence should, however, be reciprocal. On this issue I recommend that the Association's proposal be adopted.

VI. - Economics

The Association proposes the following as to salary and fringe benefits:

1. SALARY - A BA minimum of \$7350 and a MA minimum of \$7850 with a 4% increment for each of the 9 steps of the salary schedule above base.
2. DIFFERENTIAL FOR ELEMENTARY MUSIC DIRECTOR - Continuation of extra

pay in the annual amount of \$200.

3. FULL FAMILY HEALTH INSURANCE - Full payment by the Board of the \$29.95 monthly premium for full family coverage under Michigan Education Special Services Association (MESSA). Super Med. Teachers not desiring or requiring such coverage to have equivalent premium payment of selected options such as income protection, dependent life insurance or dental care.
4. ADDITIONAL \$10,000 TERM LIFE INSURANCE - Full payment by the Board of this optional coverage.
5. TERMINAL LEAVE PAY - The Association replaced an earlier proposal on this point with the following:

"Cumulative pay for terminal leave and severance pay

Formula for payment of accumulated and unused sick leave at time of retirement or termination of contract with the Montrose Community Schools.

<u>Years of service completed</u>	<u>Rate per day</u>	<u>Maximum Amount</u>
five to nine years	\$3.00	Based on total of 90 days---\$270.00
ten to 14 years	\$6.00	Based on total of 140 days--\$840.00
15 to 19 years	\$9.00	Based on total of 190 days-\$1,710.00
20 years or over	\$12.00	Based on total of 200 days-\$2,400.00

The Board's last salary offer was of the same 4% increment - 10 step schedule but with a \$6950 BA minimum and a \$7450 MA minimum. The Board proposes to pay the Elementary Music Director \$100 for the coming school year. The Board proposes continuation of its \$15 per month contribution toward employee health insurance under the MESSA plan. The Board has not agreed to additional term life insurance or terminal leave pay.

The Board has made an economic proposal that the parties reach an Agreement of at least 2 years duration and effectuate a Merit Pay plan commencing with the 197-71 school year.

As to basic salary schedule the following percentage increases would result from the parties' proposals for new base figures. The 1968-69 BA and MA bases were \$6600 and \$7100, respectively.

	<u>BA min.</u>	<u>MA min.</u>
Association	11.4%	10.6%
Board	5.3%	4.9%

The Association applies the state average of total instructional expenditure of 75.5% to the anticipated revenue of \$1,127,913 which yields \$851,574. The Association costs its proposal for teachers salaries only

at \$715,273. An additional \$16,003 is projected for Schedule B (Extra Pay), \$12,000 for substitutes and a \$34,223 item for Secretaries and Special Education (playground). The amount of \$54,000 is estimated for Principal's salaries. Assuming the state average of 2% for insurance the amount of \$22,559 is derived as an add-on to the \$20,078 amount otherwise available for instructional materials.

Local effort is shown by the following table reflecting averages for all Genesee county school districts as compared to Montrose.

	<u>Genesee County</u>	<u>Montrose</u>
Voted Millage	10.88	7.00 (3.88 less)
Debt Retirement Millage	7.24	8.80 (1.56 more)
Total Millage	26.51	24.08 (2.43 less)

In comparative terms an average taken of the BA and MA maximum salaries for the 7 Genesee county school districts of Fenton, Goodrich, Lakeville, Clio, Bentley, Bendle and Flushing shows that the top Montrose salary figures were lower than these averages by \$673 and \$691, respectively. As to the current area settlements the BA base at Atherton was reached as \$7175 and for both Lakeville and Westwood Heights as \$7000. The Association points out that the latter 2 districts are entering the second year of their 2 year contract. Genesee Intermediate has settled at a \$7500 base, but of only 2 other salary steps (\$8500 and \$9500) and with a contract not providing sick leave.

As to financial condition the Board's Annual Financial Report-Form B, maintained on an accrual basis, shows a General Fund Equity of \$91,764 as of June 30, 1969. \$186,335 is reported for "Cash in Banks". The general fund balance was \$101,610; the hot lunch account \$5,189; the internal account \$18,252 and the payroll account (covering "26 pay" teachers) \$61,284. Accounts payable were shown as \$144,540.

The Board's audit report, prepared on a cash basis, shows cash balances on deposit June 30, 1969 as \$101,610. Short-term loan obligations, interest and earmarked Title I federal aid money totals \$85,530. The Board's Accountant describes the resultant \$16,080 balance as the actual or "free" balance as contrasted with a "calculated" cash balance that can be derived from Form B as \$41,795.

The Board's 1969-70 revenue estimate of \$1,123,717 is affected by several circumstances. Since its preparation the actual student membership count was one less than predicted affecting state aid by \$549.50. An additional \$10,000 is doubtful because of expected reductions in transportation allowance, mentally handicapped-A allowance, court placed children allowance and the added cost of transportation of students to the skill center at Flint and the Mott Touri School.

The Board estimates 84% tax collections and uses 65% of its anticipated net income to budget for all teaching costs including fringe benefits. Net income for 1969-70, adjusted for capital expenditures, is now estimated at \$1,092,967. State equalized valuation (SEV) per pupil is \$7175, about 1/2 the state average and placing Montrose next to lowest in the county in this area.

In general the cash position of the District remains good and was reduced from the prior year by only \$1,000 even though overspending occurred to honor accumulated expenditure requests. Increased local effort may soon be required

if the community is to maintain desired teaching standards. The Board costs its salary offer plus contributions for existing insurance at \$708,984, although the 65% of net income formula amounts to about \$2,000 more than this costs. Further flexibility is available in final item budgeting and yearly purchases. The Board accurately quotes a 6.1% cost of living rise (Consumer Price Index change from July 1968 at 121.5 to June 1969 at 127.6 - Source: Bureau of Labor Statistics, U.S. Department of Labor), but this is for a past period and will not serve to accord teachers buying power during the coming year. Furthermore that is an insufficient increase to provide adequate compensation for the professional endeavor expected and required.

On the basis of all available facts, I propose the following salary schedule base for 1969-70 with the percentage increase over last year shown in parentheses. I embody no recommendation on the longevity pay proposal of the Board which would reportedly affect about half the 28 teachers at the top step. The Association has given me no indication that it is seeking longevity pay and in such a situation I believe it is better to merge all considerations into the basic salary schedule. For teachers not at the top step a combined salary and step level increment increase of the type here recommended would result in a total pay increase of no less than 11.8%. The recommended salary bases, to be projected at 4% increment change on a 10 step schedule, are:

BA minimum	-	\$7200 (9.1%)
MA minimum	-	\$7700 (8.5%)

As to differential for the Elementary Music Director, I find this a difficult question because of uncertainty as to how the program will unfold. The Board has offered " . . . to reconsider this item during the school year", which is a reasonable approach. However I believe the matter of extra pay should be firmly established prior to concluding an Agreement in order that all concerned know exactly what is to be paid. I have no information concerning the individual in question; but I assume that a sufficient measure of dedication is present to best assure the creative music program of the past even though some improvisation of scheduling and facilities may be necessary. \$200 has been paid for this assignment for the past 3-4 years. I recommend continuation of the \$200 payment for at least the 1969-70 school year.

As to health insurance I am not persuaded of any compelling need for full employer contribution at this time. I recommend continuation of payment by the Board of \$15 per month.

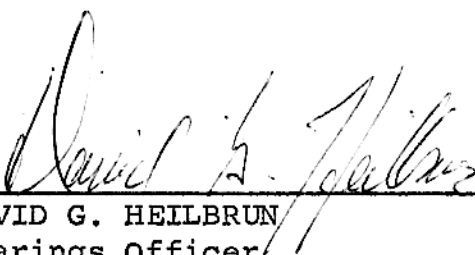
The \$3,000 term life insurance of the MESSA plan is of marginal adequacy under contemporary conditions. On the other hand I am not persuaded that the high option additional life insurance is warranted from the facts. I recommend that optional coverage of \$5,000 additional term life insurance benefit (with corresponding accidental death and dismemberment benefit) be made available to all teachers by the Board's payment of all necessary premiums.

There is inadequate justification advanced for a terminal leave benefit and I recommend that it not be adopted.

The Board's proposal on improved pay for substitutes is responsive to demonstrated need and further ties in with issue III above. To the extent that substitutes are better paid, the Association will tend to achieve its goal in this area. I recommend that the parties agree to the Board's proposal for daily pay ranging from \$20 to \$26.

I have carefully considered the Board's Merit Pay plan and the fact that such a principle was experimentally adopted for this year in the nearby St. Charles school district. The Association voiced strong opposition to this proposal and pointed out several serious objections. I leave to the parties any action toward continued discussion of the subject; concluding only that it is not appropriate at this time and so recommend that it not be adopted.

The Board's position as to length of the contract was tied into its Merit Pay proposal. Absent this feature, and with the potential for rapid change in the field of public education, including ramifications of the Governor's recently announced education reform proposals, I believe a one year contract is desirable at this time and so recommend.



DAVID G. HEILBRUN
Hearings Officer

Dated at Southfield, Michigan
this 14th day of October, 1969.