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EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISIONSTATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION  
Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

In the Matter of

MT. CLEMENS COMMUNITY  
SCHOOL DISTRICT

-and-

MT. CLEMENS EDUCATION ASSOCIATION

On September 27, 1971, the undersigned, Leon J. Herman, was appointed by the Employment Relations Commission as its hearings officer and agent to conduct a fact finding hearing relevant to the matters in dispute between the above parties, pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended, and the Commission's regulations. Accordingly, and upon due notice, a hearing was scheduled and held on October 21, 1971 at the Public Library, 150 Cass Avenue, Mt. Clemens, Michigan.

Nunneley, Nunneley, Hirt & Rinehart, Attorneys, by William H. Nunneley; William Harding, Superintendent; and Russell Toner, Assistant Superintendent, appeared on behalf of the Board of Education.

Walter S. Benton, M.C.E.A. Executive Director; Samuel Giammarinas, President, M.C.E.A.; G. Douglas Sutherland, Margueritte Smith, Robert Warren, Gerald Robinson and Thomas Farago represented the Association.

MT. Clemens Community School District

Grievance Procedure

The contracts under which the District and the Association have operated for the past six years have contained provisions for consideration and disposition of grievances, short of arbitration. In the contract now pending the parties have agreed to binding arbitration as the final step in the procedure, with the exception of several subordinate issues which have been presented in this proceeding.

In Section A of the proposed grievance procedure provision, the Board has defined a grievance as "any claim by the Association, teacher, or group of teachers, that there has been a violation, misinterpretation, or misapplication of the terms of this agreement."

The Association defines a grievance as "a complaint by a teacher or a group of teachers, based upon an event, conditions, or circumstances under which the teacher works, allegedly caused by a violation, misinterpretation or inequitable application of established policy or the provisions of this agreement."

Except for the inclusion of "established policy" there appears to be little distinction in substance between the Board's version and that prepared by the Association. There is of course no question that the Board has the right to establish policy. There is also no question that any policy which is established by the Board must conform to and fall within the confines of the contract between the parties. Thus, any policy which is established contrary to the agreement is void and may be grieved without necessary inclusion of the words "established policy."

Further, any practice which may come into existence as the result of day to day administration of the agreement must be expressly or tactitly agreed to by both parties. It must fall within the terms of the agreement. Once established by continuous practice it becomes a part of the agreement as effectively as though it had been expressly written therein.

It follows that the words "established practice" are not necessary to the definition of a grievance. I therefore recommend that Section A, whether as written by the Board or by the Association, without the inclusion of the words "established policy", be adopted.

The fear has been expressed that teacher evaluations may not be included in the grievance procedure, since teacher evaluation is not incorporated in the agreement. If teacher evaluation is an accepted practice under the agreement, then it is a practice which becomes subject to the grievance procedure in any event and need not be included as a specific element of the grievance procedure. If the Association has doubts on this score, I recommend that it be expressly stated to be subject to grievance.

In Paragraph C of the arbitration section the Board has provided that the arbitrator shall have no power "to require any retroactive adjustment in compensation for more than ten days prior to the date the grievance was filed." The Association emphatically objects to the inclusion of this phrase on the ground that it penalizes the teacher for administrative errors, oversights, or outright attempts on the part of the Administration to deny a teacher just compensation.

It would appear that the ten day provision runs counter to the limitation in Paragraph C, Level 1, wherein a teacher is permitted fifteen calendar days after the event or the occurrence which is the basis of the complaint to make his grievance known.

In fairness to both parties and to eliminate the inconsistency between the two sections I recommend that the arbitrator be authorized to make retroactive adjustments in compensation up to fifteen days from the date the teacher knew or should have known of the occurrence upon which the grievance is based.

The Board also asks that the cost of arbitration be borne by the losing party. This is an infrequent, although not unusual, clause. It is not a provision which arbitrators generally relish. The case is rare in which either party is absolutely in the right or absolutely in the wrong. To characterize either party's position as black or white creates problems which would better not have arisen. It is particularly troublesome in cases in which one party may win the immediate decision, although the principle on which it is based may well be to the advantage of the other. The clarification of the parties' rights and obligations relative to an instance of dispute is often more important than whether either party loses or wins the particular case. It is the interpretation of the contract which is most important to both, since both benefit from a clarification which has been troublesome in the past. Nor do I find much substance in the theory that the cost of arbitration will deter a party from proceeding unless he is sure of winning the case. Even paying half

the cost of arbitration can be a burden. Denial of the right to arbitrate an issue because of the potential cost involved can be highly damaging to relations between the Board and its employees. I therefore strongly urge that the parties agree to equal sharing of the cost of arbitration.

### Longevity

Since the 1967-68 school year the Board has paid to its teachers two per cent of their base salary upon achieving sixteen years of service, with an additional two per cent payable at the twentieth year. The Association points out that Macomb County Intermediate District pays four per cent after five years, Chippewa Valley pays five per cent after fifteen years and other schools pay from \$250 to \$500 after fourteen to twenty five years of service. Mt. Clemens pays only \$156 to bachelors and \$176 to masters.

Since longevity is predicted upon a percentage of base pay, the Board argues that with regular annual increases it has become extremely burdensome to pay the additional longevity allowance. It has no objection to an increase if salaries remain constant, but this has not been the case.

Actually the cost to the Board has been minimal. In 1970-71 it paid \$11,826.00 in longevity allowances. The Association asks an increase to four per cent, which would cost the Board \$13,460.00.

I hesitate to increase the Board's cost unduly in the present economic environment in which it finds itself. However, I believe a small increase would be of minor cost and would bring the District's payments

closer in line with those of other schools in the area. I therefore recommend an increase from two per cent to three per cent in longevity payments.

#### College Reimbursement Tuition

The Board has paid, since 1967-68, the sum of \$10 per credit hour for college courses taken by its teachers, to reimburse them for tuition costs. The Association asks that this be increased to \$15 per credit hour, while the Board has offered \$12.

It is not disputed that, apart from the cash allowance, the Board has been liberal in college tuition reimbursement. No prior approval is required if it is related to the teacher's studies. It is agreed that it is the obligation of a professional teacher to take additional hours of study. The principle involved, however, is more important than the dollar amount involved, although money is an important factor to the Board in these times.

The total amount which the Board would have to pay under the Association's proposal is \$11,460.00. Under its own proposal the amount would be \$9,168.00.

While I appreciate the importance of professional improvement by the undertaking of additional college studies, I also appreciate that the Board must limit its expenditures at some point to attain a manageable position. I therefore recommend that the Board's offer of \$12 per hour be accepted.

### Non-Teaching Compensation

The Board has paid \$6 per hour for time devoted to developing a new curriculum, minor repair work and other items included in the non-teaching classification. It also includes returning early in the school year to set up classrooms, maintenance of classrooms, development of television programs and audio visual work. The rate has not been changed since 1967-68. The Association asks that it be increased to \$8 per hour. The work involved is strictly voluntary.

While the work is done by a direct agreement between the teacher and the administrator, it is unfair that it should not be adequately compensated. It is work from which the Board receives the benefit and should be compensated accordingly.

I recommend that the non-teaching compensation rate be increased to \$7 per hour. The total cost to the Board would be less than \$1,000.00.

### Hourly Rate and Special Programs

This issue involves driver education and adult education programs. The Board has paid 1/1200th of the regular teaching rate. It agrees that the quality of the programs is high. The cost, however, has gotten out of hand, and has reached the point where some of the programs must be eliminated if the Board is to continue any at all. The present average hourly rate paid to the teachers is \$11.90, with a top of \$12.25, while the average rate paid elsewhere in the state is \$7.50 to \$8.50 per hour.

The Association has offered to freeze the rate at \$12.00 per hour while the Board has offered \$8.50.

The Association takes the position that if a teacher works outside his regular job he should be compensated at his regular rate. This is not necessarily so, and apparently is not so treated in other districts, such as Chippewa Valley at \$6.50, Lakeview at \$6.25, Roseville at \$7.50 and East Detroit at \$7.75. The cost is particularly burdensome because most of the teachers in these fields are at the top step of the salary schedules.

I feel that the teachers should be adequately compensated, but at the same time I agree that the cost has gotten out of hand and should be stabilized at a more reasonable figure. I therefore recommend that the rate for adult education and driver education be reduced to a flat figure of \$9.50 per hour. I think this fairly compensates the teacher while bringing the cost to the District within manageable limits.

#### Salaries

The starting BA salary in the District in 1970-71 was \$7,800, increasing to \$12,348 in twelve steps. The Board has offered to increase the salaries paid to \$8,300 at start and \$13,600 in the twelfth step. The Association has asked for a twelve step schedule of \$8,400 to \$13,922 or an eleven step schedule of \$8,400 to \$13,748. It prefers the eleven step schedule but will accept either.



Last year's MA salary schedule spread from a start of \$8,800 to a maximum of \$14,700 in eleven steps. The Board has offered \$9,300 to \$16,005, while the Association has asked \$9,400 to \$16,131.

I am satisfied from the Board's presentation that its funds are limited and that it will wind up the 1971-72 year in a deficit position. At the same time I am well aware that the cost of living has increased over the years and that teachers, like all other working people, need additional amounts to support their families.

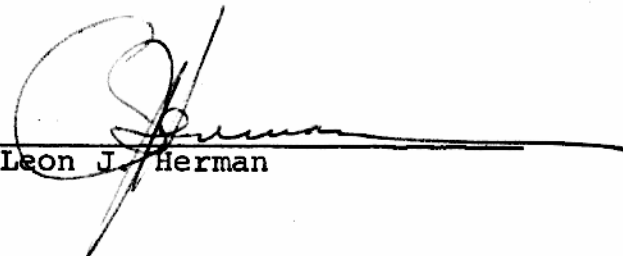
I suggest no change in the twelve step bachelor schedule, since it does not appear to be of great importance to the teachers at this time. It is noticeable that the difference between the Board and the Association positions on salaries is slight. The Board offers \$100 less to start than asked by the Association at both the bachelor and ~~master~~ master level. At the top of the bachelor scale the Board offer is \$322 less than asked by the Association. At the eleventh master step the difference is \$126.

The comparative view leads to the impression that the Board's offer is reasonable and very close to that asked by the Association; except in the eleventh step where, by coincidence, a large number of teachers are grouped. This factor alone does not warrant an excessive increase at that step. It would seem that the parties should come to immediate agreement if the Board would increase its offer at each step by \$50. I therefore recommend a salary schedule of \$8,350 to start and \$13,650 at the twelfth step of the bachelor's scale, and \$9,350 to start in the master's schedule running to \$16,055 at the eleventh step. An

addition of \$50 in the specialist and doctor rate over the \$600 offered by the Board should adequately meet the Association's request for a \$700 payment in these groupings.

I wish to repeat at this time what I said at the inception of the hearing, to the effect that these recommendations are made without consideration of any ruling which the Federal Government Wage Board may make. I have neither the intention nor the capacity to second guess the Federal Government's position in the matter. Any agreement which is reached by the parties, based on these recommendations or otherwise, must be subject to any ruling or policy made by the national authorities.

I sincerely hope that the parties will act upon my recommendations and bring their contract negotiations to prompt resolution.



Leon J. Herman

Southfield, Michigan  
November 3, 1971