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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

MUSKEGON HEIGHTS BOARD OF
EDUCATION

and

MICHIGAN COUNCIL 25, AFSCME,
AFL-CIO

G85 F-729

OPINION AND RECOMMENDATIONS

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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

Robert Hawlett /

A p p e a r a n c e s :

FOR THE SCHOOL BOARD:

Charles L. Hitesman, Attorney
John Sydnor, Superintendent
of Schools
Robert Warren, Assistant
Superintendent of Schools
Lemuel Easley, Business Manager

FOR THE UNION:

Gary D. Patterson, Staff
Representative
John A. Egyed, Director
of Special Education

Local No. 2859 of Michigan Council No. 25, American Federation
of State, County & Municipal Employees International Union, AFL-
CIO (Union) represents a unit of employees in the Muskegon
Heights School District, described as follows:

Administrators, including Principals, Project
Directors, and Supervisor of Special
Services, but excluding Superintendent and
Assistant Superintendent and all other employees.

The Union was certified on June 3, 1975 by the Michigan Employment
Relations Commission (Commission) in Case No. R75 D-175.

The certified personnel in the Muskegon Heights School
District are represented by the Muskegon Heights Education
Association affiliated with the Michigan Education Association.
They are currently subject to a collective bargaining contract
covering the period from September 1, 1984 to August 31, 1987.

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RELATIONS LIBRARY

Muskegon Heights Public Schools

On June 24, 1981, the Union entered into a collective bargaining contract with the Board of Education of the City of Muskegon Heights, Muskegon County, Michigan (Board) which terminated by its terms on June 30, 1983 but was extended to June 30, 1984.

The Union and Board engaged in collective bargaining for a contract to succeed the contract of June 24, 1981, but a contract has not been executed.

The parties have negotiated most of the provisions of a contract to commence July 1, 1984, but were unable to agree on the issues involved in this proceeding, and which are discussed in the text below.

On August 26, 1985, the Union filed a petition for fact finding with the Commission under Section 25 of the Michigan Labor Relations and Mediation Act [MCLA 423.25; MSA 17.454(27)].

Pursuant to Section 25 and its rules and regulations, the Commission appointed the undersigned, Robert G. Howlett, as fact finder in this case.¹

Four issues over which the parties have bargained were presented to the fact finder. The issues are described in the Union's petition as quoted from the petition and stated below.

Insurance

Current Language: (Article XII., Section F.3.)

Effective July 1, 1981, the Board shall provide each Administrator with ten thousand dollars (\$10,000.00) of life insurance. This amount is in addition to the life insurance provided in the MESSA Hospital-Medical Program.

¹ There was mediation by Mediator Wheeler Witte prior to the filing of the petition by the Union.

Union Proposal:

Provide Administrators with life insurance in an amount of five thousand dollars (\$5,000.00) over the amount provided for the teachers.

Employer Position:

Unknown. (Employer has not responded to Union Proposal.)

Professional Compensation

Union Proposal:

1984-85: 5.5% increase on all salaries
1985-86: 5.5% increase on all salaries
1986-87: 6.5% increase on all salaries

Employer Position:

Unknown. (Employer has not made a proposal on salaries.)

Paid Leaves of Absence

Current Language:

(Article XI., Section A.2.)

Unused sick leave shall be cumulative up to a maximum of two hundred (200) days.

Union Proposal:

Unused sick leave shall be cumulative to an unlimited amount.

Employer Position:

Current language.

Residency

Current Language:

None

Employer Proposal:

All employees hired after June 1, 1985 shall, as a continuing condition of employment, reside within the School District. Such residency shall be established within ninety (90) days from date of hire. Satisfactory evidence of residency may be requested by the Superintendent of his/her designated representative from time to time. On failure of maintaining this residence condition, the employee shall be discharged without recourse to the grievance procedure. The Board agrees to indemnify and save harmless the Administrators Unit against any and all claims, suits and other forms of liability that may arise out of or by reason of this Residency Clause.

It is further understood that Administrators now residing in the School District shall maintain residency as a continuing condition of employment with the Muskegon Heights Public Schools.

Further, any employee who is living outside of the School District of the City of Muskegon Heights and relocates his/her residency, must relocate in the Muskegon Heights School District as a continuing condition of employment.

Union Position:

(Letter of Understanding, as follows)

The parties to this Agreement recognize the importance of residency within the Muskegon Heights School District. Administrators recognize that an Administrator must be familiar with District parents, students and neighborhoods. Administrators should be visible participants in the community activities that contribute to a quality educational program. The Board recognizes that many present and future Administrators will be

familiar with the community and will continue to participate in community activities without becoming residents of Muskegon Heights. Accordingly, future prospects for openings within the Administrators Unit will be encouraged to become and remain residents. The Board may inquire as to whether new administrators intend to become residents; however, residency will not be imposed by the Board as a condition of employment.

At the hearing, the Union submitted a new proposal which is quoted and discussed below.

The Board filed an answer in which it agreed that the four issues have been unresolved.

The Muskegon Heights School District is one of twelve school districts in Muskegon County. It has approximately 3,500 students which places it fourth in size in the County. Its State Equalized Valuation is approximately \$64,500,000 which places it seventh in the County. It has a per pupil valuation of \$18,654, which places it last in the County.

As of 1979, the medium income per family in Muskegon Heights is \$10,523 and the per capita income is \$4,583. In 1979, the medium income per family in Muskegon County was \$16,167 and the per capita income was \$6,358. In 1979, 22.6% of the Muskegon Heights families were below the Federal Government established poverty line as compared with 10% in the County. It is apparent from the evidence that Muskegon Heights has financial problems in financing its schools - probably more than any other school districts in the County.²

I will discuss each of the four issues seriatim.

² I was impressed at the hearing with the caliber of the representatives in both management and the bargaining unit. I came away with the opinion that both management and the bargaining unit administrators are doing an excellent job in Muskegon Heights with limited resources.

INSURANCE

The Union proposes \$5,000 over the amount of insurance provided for teachers, whereas, the Board offered no counter-proposal. The evidence discloses that life insurance carried by Muskegon County School Districts for administrators ranges from a high of \$59,000 (Fruitport) to a low of \$5,000 (Oakridge). Oakridge is the only district which provides less insurance for administrators than Muskegon Heights. The next lowest, after Muskegon Heights, is Ravenna which has insurance coverage of \$25,000 for its administrators. A comparison of economic benefits with communities similar to one involved in a case under the Michigan Police/Fire Fighter Arbitration Act (Act 312) is one of the statutory standards to be applied by Act 312 arbitration panels. Indeed, interest arbitrators recognize comparisons with similar enterprises or units of government as a factor in determining an economic benefit to be awarded to employees. A mid-point between the high and the low districts providing insurance would be in excess of \$25,000. When I consider the other districts and the financial status of Muskegon Heights District, I recommend that the Board provide \$25,000 of life insurance for the administrators in the bargaining unit. This would be below the mid-point but is, in my opinion, a fair and equitable amount.³

³ The exhibit discloses that Muskegon Heights administrators also receive \$5,000 as provided in a MESSA Health Insurance. Thus, they are actually receiving \$15,000 rather than \$10,000 as insurance. There is no evidence that administrators in other districts were receiving this additional \$5,000 of insurance. It seems likely that some administrators in other districts would be receiving such insurance.

PROFESSIONAL COMPENSATION

Evidence submitted of the salary percentage increases of teachers and administrators in the Muskegon Heights School District from the 1979-80 school year through 1986-87 is as follows:

SALARY PERCENTAGE COMPARATIVE
TEACHERS AND ADMINISTRATORS
1979-80 Through 1986-87

	<u>TEACHERS</u>		<u>ADMINISTRATORS</u>	
	Amount	%	Amount	%
1979-80	11,585	8.0%	22,096	8.0%
1980-81	12,454	7.5%	23,608	6.8%
1981-82	13,463	8.0%	25,357	7.4%
1982-83	14,607	8.5%	27,341	7.8%
1983-84	15,191	4.0%	28,435	4.0%
1984-85	16,027	5.5%	-0-	-0-
1985-86	16,908	5.5%	-0-	-0-
1986-87	17,923	6.0%	-0-	-0-

The exhibit discloses that in three years (1980-81, 1981-82 and 1982-83) the administrators received lower percentage increases than the teachers.

Evidence was offered concerning the teachers' salaries in the Muskegon County School Districts for 1985-86 and the administrators' salaries in the several districts for 1980-81, 1981-82, 1982-83, 1983-84, 1984-85, and 1985-86. The exhibits presented disclosed the highest rate for elementary principals, middle school assistant principals, middle school principals, high school assistant principals and high school principals. Comparisons in the exhibit are not exact as the evidence discloses salaries are based in part on the length of service of the several administrators. For this reason an exact comparison cannot be made from the exhibits.

The exhibits do disclose, however, that Muskegon Heights in 1979-80 ranked between third and sixth (for the five classifications in the Country) whereas by 1985-86 it had fallen to between sixth and eleventh.⁴ Thus, as one would expect from no increase for three years, the Muskegon Heights administrators have fallen behind in comparison with the other school districts.

Based on the comparison with the other districts and the amounts received by the Muskegon Heights School District teachers in the three year period, I have reached the conclusion that the Union's proposal is reasonable. The increase is the same as the teachers in the first two years. For the third year it is one-half of one percent higher. This is, in my opinion, justified because the administrators received less during two of the years between 1979 and 1984, and their pay has been delayed.

I will recommend, that the Board agree to the Union proposal.

PAID LEAVES OF ABSENCE

Currently unused sick leave is covered by Section A of Article XI of the Collective Bargaining Contract which reads in relevant part:

ARTICLE XI: PAID LEAVE OF ABSENCE

A. Sick Leave

1. Each administrator employed by the Board of Education shall be allowed a maximum of twelve (12) school days' sick leave each year at the earned rate of one (1) day per month of employment.

⁴ Muskegon Heights teachers ranked seventh for the minimum and fifth for the maximum among the County School Districts.

2. Unused sick leave shall be cumulative up to a maximum of 200 days.

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6. Deductions shall be made on a per diem basis for forty (40) work weeks or 200 days.

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11. One-half (1/2) of the unused sick leave shall be paid to the administrator upon retirement or in the case of death to the administrator's beneficiary.

The Union proposes that sick leave shall be cumulative in an un-limited amount; the Board would retain the current language.

The evidence discloses that of the eleven other districts in the County, seven have unlimited accumulation of paid sick leave days during an employee's tenure. One district has 180 days, one 165 days and one-160 days. One district did not respond to the Board's inquiry.

The Board's primary objection appears to be that teachers now have a privilege to accumulate 200 days of sick leave and that to agree to unlimited accumulation for the administrators would be a case of the "tail wagging the dog."

As I consider the recommended administrators' salary increases for the three contract years, I am persuaded that weight should be given to the Board's argument that the administrators should not be placed ahead of the teachers on this condition of employment.

As the salary increases I recommend are, in my opinion, reasonable and as I recommend a substantial increase in insurance for the administrators, I recommend that no change be made in the accumulation of sick leave from the current 200 days.

RESIDENCY

The 1980-83 Contract is silent on residency. The same is true with respect to the contract for the certified personnel (teachers).

The Board has adopted a policy with respect to residency by school employees which reads:

POLICY STATEMENT ENCOURAGING RESIDENCY

WHEREAS, the Board of Education of the Muskegon Heights Public Schools has expressed concern for the diminishing number of employees who are city residents; and

WHEREAS, a significant number of school employees who are residents of the City of Muskegon Heights and a significant number of other city residents are sending their children to private and parochial schools which results in an educational as well as a financial loss to the district, and

WHEREAS, the Board of Education believes it is important to the school district to employ city residents, and

WHEREAS, it further believes that competency is of paramount importance in establishing employment in the Muskegon Heights Public Schools.

THEREFORE BE IT RESOLVED, that staff be directed to give preference to employing personnel who plan to live in Muskegon Heights or who presently live in Muskegon Heights, and

BE IT FURTHER RESOLVED, that non-residents selected for major administrative promotions be encouraged to become residents of the City of Muskegon Heights, and

BE IT FURTHER RESOLVED, that the Board of Education direct the staff of the Muskegon Heights Public Schools to encourage non-resident employees to consider the value of becoming city residents and to further encourage all employees of the school district who are resident of the City of Muskegon Heights to send their children to the Muskegon Heights Public Schools.

There are eleven administrators in the bargaining unit of whom five live in the district. Three administrators previously lived in the district, but have moved out.

The Board avers:

1. It is desirable that administrators live in the school district as they are role models for the teachers and other persons.

2. If administrators live in the district it will encourage teachers to do likewise.

3. Residents of the district are more likely to participate in school and community activities than persons who do not live in the district.

4. A resident of the district adds to the tax base.

5. Administrators who live in the district are more accessible to students and parents.

Superintendent John Sydnor testified that the foregoing are the basic reasons that the Board wishes to have its teachers live in the district. He explained that over a period of years, it has been Board policy to encourage administrators and teachers to live in the district, but the policy has not worked as well as the Board would wish. Two administrators, before they were hired, said that they believed in residency, but thereafter moved out of the district.

In answer to a question, Superintendent Sydnor stated that housing for administrators (price and type in which they would live) is available in the district. The City of Muskegon Heights

is endeavoring to develop tracts of land for housing, and there are vacant houses in the city which are available. He was asked whether there were any administrators who live outside the city who do not participate in school activities. He replied in the negative. He also testified on cross-examination that there has been no complaints from students or parents with respect to administrators not being accessible, and that all administrators have taken an active part in promoting an affirmative vote in millage elections.

Nathaniel Allen, a middle school principal, testified that he became a resident of Muskegon Heights in 1976 when he first started to work for the Board. He described his personal experience. When he moved to the district he purchased a house for \$20,700.00 and spent \$11,000.00 in renovation. At that time he was single. Now he is married and has two children. It became necessary for him to find a larger house. He was unable to sell the house which he purchased in 1976 for his asking price of \$32,000.00. His house has been on the market for three years. He is currently renting it, and lives in another - and larger - house in the school district.

The Union's principal argument is that the City of Muskegon Heights, is not sufficiently large to provide adequate housing for all administrators, and that individuals should have a right to live where they wish.

Residency has been the subject of a number of cases involving police and firefighters under Act 312.

It requires no evidence to conclude that there are dissimilarities with respect to residency between uniformed and non-uniformed employees and, indeed, between police and firefighters. That employees involved with public safety should live near to their work place is a stronger argument than a residency argument involving non-uniformed employees. Indeed, the argument with respect to police is stronger than the argument with respect to firefighters as police are generally "24 hour" employees, i.e., subject to call at any time. Experience has shown that firefighters are seldom called back to duty after completing their work shift.⁵

The Panel chairman in Act 312 cases have drawn a distinction between larger cities and smaller cities.⁶

The rationale for treating smaller cities differently than larger cities was expressed in a case involving the City of Inkster by Panel Chairman Harry Edwards, now a Judge for the Court of Appeals for the District of Columbia:

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If the City of Inkster constituted a relatively large geographic area, with a good variety of available and suitable housing, then the City's 'para-military'

⁵ I base this statement on Act 312 cases involving firefighters in which I have served as panel chairman. There was evidence to this effect in some cases and a statement in one case that such is a fact. It was not challenged. In one case where there was a shortage of firefighters, the city proposed (and the panel directed) that selected firefighters carry receiving devices so they could be called back to duty during off hours if needed.

⁶ I so held in a 1979 case between the City of Detroit v Detroit Fire Fighters Association. In that case the union sought to eliminate the residency requirement which was in the collective bargaining contract. The Panel denied the union proposal.

arguments might carry more force. But Inkster is confined to a relatively small area and, therefore, police officers can live outside of the City limits and still be reasonably available for emergency call-ins.

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Panel Chairman George Roumell, Jr. in a case involving the Harper Woods Police Department commented on the Inkster decision:

The decision herein is limited to Harper Woods and was not influenced by the Inkster decision which was based on a different factual situation. Likewise, the teaching of this decision is that each case must turn on its own record, and thus, should have no bearing on the pending Detroit decision. It is obvious that the residency requirement in Detroit does not limit either minority or college graduate recruitment.

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I agree with Panel Chairman Roumell that "each case must turn on its own record."

I understand the Board's desire that administrators live within the school district. I also understand the desire of administrators that they should have the privilege of living wherever they wish - a privilege enjoyed by most people.

Superintendent Sydnor participated in the closing argument and made an eloquent plea for residency, particularly in Madison Heights, where racial mix is different than in other school districts in Muskegon County. He urged the necessity for leadership in the community which can be supplied by persons who have the standing and education of the Board's administrators.

I was moved by Superintendent Sydnor's plea. On the other hand, I recognize the human desire of individuals to freedom of choice as to their place of residence.

In spite of Superintendent Sydnor's plea, there was no persuasive evidence that the administrators would perform better as administrators if they lived in the school district. As noted in the text above, Superintendent Sydnor agreed on cross-examination, that administrators do participate in school activities even though they live outside the district, and that there have been no complaints from students or parents with respect to administrators' accessibility.

At the hearing the Union offered the following proposal:

Residency

All employees hired after January 1, 1986, shall, as a continuing condition of employment, reside within Muskegon Heights School District or within fifteen (15) miles of their work location within the school district. Such residency shall be established within ninety (90) days from date of hire. Satisfactory evidence of residency may be requested by the superintendent or his/her designated representative from time to time. On failure to maintain this residence condition, the employee shall be discharged. Any appeal of the discharge shall be limited to the question of the fact of whether the administrator lived within the school district or within fifteen miles of his/her work location. The discharge may be set aside only if the residency condition as[sic] been met. The Board agrees to indemnify and save harmless the Administrators unit against any and all claims, suits and other forms of liability that may arise out of or by reason of this residency clause.

This proposal goes further than I would, based on the evidence, recommend.

As the Union has proposed it, the Board should, in my opinion, accept it as part of the collective bargaining contract.

I am reasonably certain that if interest arbitration in Michigan were applicable to school districts that I would as Panel Chairman, deny the Union proposal and recommend the retention of the present Board policy. However, as the Union has gone further than the evidence persuades, the Board should, in my opinion, accept the Union proposal. I will so recommend.

RECOMMENDATIONS

I recommend the following:

Insurance

The contract should provide that the administrators receive \$25,000 in life insurance based on the same conditions as exist in the June 24, 1981 contract.

Professional Compensation

The Board should adopt the Union proposal by increasing compensation for the administrators in the bargaining unit as follows:

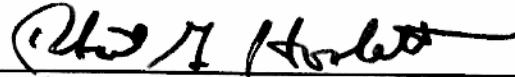
1984-85	5.5% increase in all salaries
1985-86	5.5% increase in all salaries
1986-87	6.5% increase on all salaries

Paid Leave of Absence

There should be no change in the current leave of absence policy.

Residency

The Board should adopt the offer made by the Union at the Fact Finding Hearing.

A handwritten signature in black ink, appearing to read "R. G. Howlett", written over a horizontal line.

Robert G. Howlett, Fact Finder

Issued at Grand Rapids, Michigan
this 14th day of February, 1986.