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STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

In re Fact Finding:

MUSKEGON CITY TEACHERS
EDUCATION ASSOCIATION

and

MUSKEGON BOARD OF EDUCATION.
/

FACT FINDER'S REPORT AND RECOMMENDATIONS

The present Collective Bargaining Agreement between the Muskegon Board of Education and the Muskegon City Teachers Education Association was for the period of August 31, 1970 to June 30, 1971. The parties commenced negotiations for a new contract on March 15, 1971, and up to the time a petition for fact finding was filed, the parties had met twenty-one times, four of which included a state labor mediator. A fact finding hearing was held in Muskegon on November 11, 1971, and lasted approximately six hours. Mr. Donald J. Veldman was counsel for the Muskegon Board of Education and Mr. Larry Diebold was spokesman for the Michigan Teachers Education Association. Presentation for each side was excellent. The Board introduced twenty-two exhibits in support of its position; the Teachers offered thirty-three exhibits. All of the exhibits were well prepared, clear and helpful in understanding and analyzing the differences between the parties.

The Michigan Public Employee Relations Act specifically provides for mediation of public employee disputes by the State Labor Mediation Board when collective bargaining has failed to produce an agreement. The fact finding function is derived from the general mediation provisions. M.C.L.A. §423.25. Despite

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the fact that the parties did not appear close to an agreement, it is to the credit of the teachers and also the board that they were willing to make a serious and conscientious effort to reach an agreement based upon a fact finder's report. The statutes of the State of Michigan encourage the use of fact finding when there is a failure of the parties to reach an agreement. The parties should recognize, and so should the public, that when the course of fact finding is undertaken, it becomes the responsibility of both the board and the teachers to carefully re-assess their previous positions in light of the report and not to make the fact finding process an exercise in futility by ignoring the report even if the recommendations may not be to their liking.

In the Petition as well as at the hearing itself, seven areas appear to be in dispute and they will be taken up in order of presentation.

1. TEACHING HOURS

This is an issue which probably does not warrant being submitted to fact finding. One suspects that, if other issues were resolved, this would fall into place. I cannot believe, as a matter of practice, that teachers and students leave the buildings simultaneously. There was no substantive evidence presented of "student unrest" or serious discipline problems. Nevertheless, a rule that on days specified, that is Fridays and the day before a holiday, teachers will remain for a period of five minutes to assist in clearing students from building, is neither unreasonable nor burdensome.

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2. PERSONAL LEAVE

It is the recommendation of the fact finder that the language of the present contract be continued. Admittedly, the language is not as "tight" as that used in many other contracts but there is a serious question whether a change in the language would, in fact, be a real deterrent to one who has been violating this provision in the past. Present language specifically refers to "personal business leave". One need not be a Philadelphia lawyer to understand that this is not a license to go hunting or fishing for two days. If, in the future, these "personal business leaves" do, in fact, get out of hand, it might be necessary to institute a system of obtaining advance written approval. In the meantime, however, the figures submitted to the fact finder were not convincing that, at the present time at least, this is a problem of any major consequence.

3. SABBATICAL LEAVE

This is an issue which, unfortunately, was not seriously negotiated prior to fact finding. The board apparently had understood at all times that this was an economic issue. The association, however, at fact finding announced it only sought to have the principle of sabbatical leave recognized in the contract and that, therefore, this was not an economic issue. No question exists that sabbatical leaves are well recognized in the teaching profession and are included in most contracts. Since, at the present time at least, this is not an economic issue, the parties should be able to agree on appropriate contract language which will recognize the principle of sabbatical leave

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and when and if the financial situation of the district improves, details can be worked out in subsequent years.

4. ECONOMIC ISSUES: SALARY, FRINGES, BUDGET

As previously indicated, despite the frequent bargaining sessions, it appears that the parties were never close to a settlement. After the teachers made an economic proposal, the board never countered with an offer of its own for the reason that the board had claimed at all times that it was financially unable to pay its teachers anymore than provided under the current wage schedule. As stated in its brief:

> "The Board fully realizes that it is asking that the teachers in this district participate in a program of economy never previously requested or ever anticipated."

Facts marshalled by the Board in support of its position are impressive. For example, (1) there is a loss in millage for the year of 1.094 mills; (2) there has been a decrease in the state equalized valuation of $2,482,822.00; and (3) the district has had a loss of almost 400 students.

Despite the financial plight of the district, the fact finder is convinced that a modest cost-of-living increase to the teachers is warranted under all of the facts. It may be that the voters should be asked for additional millage. This, of course, is a decision for the board to make. In the meantime, however, if teacher pay falls behind comparable districts, it will be the caliber of the schools and, ultimately, the students who will suffer the most. Without going into a detailed analysis of the "fund equity" the fact finder is convinced that the board would be able to give its teachers a modest cost-of-living increase. Consequently, it is the recommendation of the fact

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finder that an across-the-board 5.1 per cent increase be agreed upon effective November 15, 1971. Further, that the existing steps and increments be maintained. This very modest increase is not only considerably below the "last" proposal of the teachers but also is below the President's guidelines. If, in fact, this recommendation fails to satisfy either party, it may be that the recommendation is not too far off the mark.

With respect to increased hospitalization insurance coverage, life insurance and long-term disability, it is the recommendation of the fact finder that no changes be made over and above those which are authorized in the existing contract. No one can argue that the financial crisis facing the district is, in fact, serious and, in fairness, unexpected. Any available funds for additional economic benefits for the teachers should be placed in the salary schedule.

5. AGENCY SHOP

This apparently has been a difficult issue for the parties.

To begin with, the fact finder has read all of the cases cited to him by the parties and, in addition, has independently researched the issues involved. The fact finder is convinced that, at the present time, no legal impediment exists should the parties agree to accept a modified agency shop.

Certain facts on this subject appear inescapable. In the first place, union security is more and more an accepted fact of life, particularly in the larger, metropolitan areas. Secondly, no evidence whatsoever was submitted to support the claim that "unionism" (if that is the right word) is unprofessional, undignified or in any way detracts from the educational system for the students. As a matter of fact, Michigan's statute

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on labor relations in public employment appears to encourage active and strong unions. For example, Michigan's public employees were granted extensive collective bargaining rights in the 1965 Public Employee Relations Act which was drafted on the model of the National Labor Relations Act. It affirms the right of public employees to join labor organizations, specifies election proceedings for the determination of an exclusive bargaining representative for an appropriate unit, requires that governmental employers bargain in good faith, prohibits interference or discrimination by the employer, and provides the employee with remedies for employer unfair labor practices.

Although the major objection to an agency shop agreement by the board is not in clear focus, presumably it hinges on the status of current teachers in the system in good standing who, for personal reasons, do not wish to join the Teachers Association. It is submitted that, with a little give and flexibility on the part of <u>each</u> party, this thorny issue can be amicably resolved. Several districts throughout the state which have faced this same impasse have settled on a "security" provision exempting present teachers who wish to be so exempted. This, it is submitted, is eminently fair to both parties. As previously indicated, the board also has raised the question of the legality of such a provision. Although the fact finder has little doubt that such a provision is, in fact, legal, it would be simple enough to include in the contract a provision clearly stating that it is conditioned upon an ultimate ruling by the Michigan Supreme Court. Suggested language for "association security" containing a so-called grandfather clause and also conditioned upon ultimate

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Supreme Court approval, might be as follows:

"ASSOCIATION SECURITY

1. The Board agrees that it shall be a condition of employment that all teachers who presently are Association members, all teachers who hereafter become Association members, and all new teachers employed or to be employed for the 1971-72 school year and thereafter, shall become and/or remain members of the Association or pay to the Association a representation fee in an amount equivalent to the Association's regular dues.

2. The foregoing provisions shall be implemented at the beginning of the 1971-72 school year with respect to present Association members and newly hired teachers as follows:

(a) Such teacher may elect to join the Association and pay the periodic dues by authorizing the deduction of such amounts from his salary, or

(b) Such teacher may elect not to join the Association but to pay it a representation fee in the amount equal to its dues by authorizing the deduction of such amounts from his salary, or

(c) Such teacher may elect not to join the Association but authorize the deduction of a representation fee from his salary, such amount to be held by the Board in escrow until the legality of the foregoing arrangement is determined by the Legislature or the Supreme Court of Michigan as above provided, at which time such amounts, together with any accrued interest, shall be returned to the teacher or turned over to the Association.

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" (d) If such teacher elects none of the foregoing, then at the time the Legislature or the Supreme Court of Michigan determines this arrangement is valid, such teacher shall pay the Association a representation fee in an amount equivalent to the regular Association dues accrued from the beginning of the 1971-72 school year.

3. If any teacher to whom the foregoing provisions apply fails to comply therewith and the Association certifies such fact to the Board and requests it to institute dismissal proceedings, the Board shall give such teacher notice that his employment will not be continued after the end of the current school year. Such teacher's employment will be continued in normal fashion until the end of the school year following the time when there is a final decision by an agency or Court of competent jurisdiction (which has not been appealed by the teacher) upholding such termination."

6. CLASS SIZE

Both parties agree with the objective of obtaining smaller classes -- particularly in the six inner city elementary schools. Tempting as it may be to urge a firm commitment in this area nevertheless this is not an isolated issue and has obvious economic overtones. It would be inaccurate and unfair to imply that this major problem is of concern only to the teachers. It is obvious that the Board is equally concerned. The fact finder is of the opinion that, due to the present financial plight of the Board, the present language be continued.

7. LENGTH OF CONTRACT

A multi-year contract is obviously desirable particularly from the standpoint of the public and both parties appear to recognize this fact. Unfortunately, an agreement between the

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board and the teachers is already long past due and if an agreement can promptly be agreed upon, this particular issue should not be a stumbling block. It is the recommendation of the fact finder that this particular subject be seriously negotiated at the bargaining sessions for the next contract and that the present agreement be terminated June 30, 1972.

Douglas W. Hillman, Fact Finder

Dated: January 10, 1972.

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