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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

LABOR AND INDUSTRIAL
RELATIONS DIVISION
MICHIGAN STATE UNIVERSITY

In the matter of:

PARCHMENT PUBLIC SCHOOLS

and

PARCHMENT EDUCATION ASSOCIATION

Daniel Kuwger

HEARINGS OFFICER'S FACT FINDING REPORT

APPEARANCES:

For the Parchment Public Schools:

David G. Crocker, Esq., Attorney
Neal V. Singles, Assistant Superintendent

For the Parchment Education Association:

Charles Keeling, Executive Director, Kalamazoo County Education
Association
George Malley, Negotiating Team Spokesman
Dan Tindall
Gary Bishop

This is a fact finding report under the provisions of Section 25 of
Act 176 of the Public Acts of 1939, as amended, which provides in part as
follows:

"Whenever in the course of mediation under Section 7 of Act No.
336 of the Public Acts of 1947, being Section 423, 207 of the
Compiled Laws of 1948, it shall become apparent to the Board
that matters in disagreement between the parties might be more
readily settled if the facts involved in the disagreement were
determined and publicly known, the Board may make written find-
ings, with respect to the matters in disagreement. Such find-
ings shall not be binding upon the parties but shall be made pub-
lic . . ."

In accordance with the Commission's Rules and Regulations relating to
fact finding, the undersigned Hearings Officer was designated to conduct a
hearing in the matter and to issue a report in accordance with Employment Re-

Parchment Public Schools

lations Commission General Rules and Regulations 35. Briefly, this Rule states that the Hearings Officer will issue a report with recommendations with respect to the issues in dispute.

The Issues

In its petition for Fact Finding, dated August 21, 1972, the Parchment Education Association declared that the unresolved issues are:

1. Agency Shop - The Association has proposed an agency shop clause and the School District is opposed to granting the agency shop.
2. Resignation - The School District is proposing language for teachers to resign sixty (60) days prior to the end of the school year and any teacher under contract who, without cause, does not perform such contract will have their teaching certificate suspended. This proposal is unacceptable to the Association.
3. Length of the School Year - The School District is proposing 191 contract days and the Association is proposing current contract language of 188 days.
4. Emergency Dismissal - The Association is proposing that when school is called off for students, teachers will not be on duty. The School District position is no on this proposal.
5. Grievance Procedure - The School District is proposing time limits on the first two steps of the grievance procedure and the Association position is no.
6. Duration of Agreement - The School District is proposing a two year agreement; the Association is proposing a one year agreement.
7. Salary - The Association is proposing a 5.5% increase to the current base salary. The Association is also proposing the addition of a new MA + 15 salary column. The School District is proposing to add \$120 (1.5%) to the current base salary with no MA + 15 salary column. For 1973-74 the School District has proposed the following formula to determine the new base salary (add cost of living minus 1.5%). The School District and Association agree to using the 1971-72 salary schedule index for determining salaries above the base.

The Education Association through Charles Keeling, Executive Director,

filed a Petition for Fact Finding on August 18, 1972 with the Michigan Employment Relations Commission. The Association indicated that it had attempted to engage in good faith mediation regarding the issues cited above, but mediation had failed to resolve the matters in dispute. The Commission concluded that matters in disagreement between the parties might be more readily settled if the facts involved in disagreement were determined and publicly known. Accordingly, the Commission appointed Daniel H. Kruger as its Hearings Officer and Agent.

The hearing was held on October 2, 1972 at the Parchment Elementary School in Parchment, Michigan.

Discussion of Unresolved Issues and Recommendations

At the outset of the hearing, the Fact Finder asked the parties to restate the unresolved issues for the record. Mr. Keeling stated that the following were the issues at dispute: (1) agency shop, (2) resignation, (3) length of school year, (4) emergency dismissal, (5) time limits in grievance procedure, (6) salary schedule, and (7) length of contract. Mr. Crocker, attorney for the School District, concurred with Mr. Keeling's list of unresolved issues.

Discussion of Issues and Recommendations

Agency Shop

The Parchment Education Association (PEA) is seeking an agency shop provision in its agreement. The proposed clause reads: "Any teacher who is not a member of the Association or who does not make application for membership thirty days from the commencement of teaching duties shall, as a condition of employment, pay as a fee to the Association an amount equal to membership dues payable to the Association, the MEA and the NEA. In the event that a teacher

does not pay such fees directly to the Association or authorize payment through payroll deductions, as provided in Paragraph D, the School shall immediately cause the termination of employment of such teacher. The School and the Association expressly recognize that the failure of any teacher to comply with the provisions of this Article is just and reasonable cause for discharge from employment."

In subsequent negotiations, the Association modified its proposal as follows:

- (1) The fee to be paid would equal to full dues.
- (2) Those faculty members employed prior to school year 1972-73 and who have never been members of the Association would be grandfathered, i.e. would not be required to pay the assessment fees.

Currently, there are five non-members, only one of whom is full-time. Two of the five would be grandfathered.

The Association argued that the non-members are receiving a free ride, i.e. they get all the benefits negotiated by the Association without paying anything to support it. Moreover, the Association by law is obligated to represent the non-members in their grievances. The Association noted that there were 2118 teachers in Kalamazoo County, of this number, 1559 or 73.6 percent are covered by an agency shop provision. Of the nine school districts in the county, four have an agency shop provision. The Association cited the case -- Smigel et al vs Southgate Community School District, et al -- decided by the Michigan Court of Appeals in support of the legality of the agency shop.

The School District has not agreed to the agency shop provision because:

- (1) An employee of a public institution should not be required to pay a third party to retain his or her position.
- (2) The proposal by the Association does not differentiate in costs between members of the Association and non-members.

Certainly members of the Association receive other benefits for their dues and assessments than bargaining representation and contract policing.

- (3) The discharge of a teacher for failure to pay dues is not just and reasonable cause under the Tenure Act.
- (4) The Association has no need for such protection since if it is actually providing a benefit to the teachers they will recognize this and voluntarily join.

Recommendation

The Fact Finder recommends that the School District accept the revised agency shop proposal by the Education Association. The Association is willing to "grandfather" those faculty members employed prior to school year 1972-73 and who have never been members of the Association.

The argument by the District that an employee of a public institution should not be required to pay a third party to retain his or her position merits an additional comment.

The State of Michigan requires that teachers be certified as a condition of employment. The State apparently feels that by certification, the public interest is protected. There are other conditions of employment imposed by a third party, e.g. government. The agency shop negotiated by the parties is a lawful condition of employment until the Michigan Supreme Court rules that it is illegal.

There is another reason why the Fact Finder recommends the modified agency shop. In his view, an employee organization needs solidarity if it is to function effectively. The agency shop provides "internal stability." It contributes to making the organization more responsible. If members can leave at will, the organization cannot be effective in carrying out its functions. However, if there are a sufficient number of members who are dissat-

isfied with the manner in which the employee organization operates, they have the legal recourse to petition for decertification of the organization.

Resignation

The Education Association has proposed the following provision on resignations: "A teacher who intends to resign is expected to file a written notice of resignation with the School at least 60 days prior to the termination of the regular school term."

The School District seeks to expand the above provision to include, "Any teacher under contract with the School who refuses without sufficient cause to perform such contract can have his or her teaching certificate suspended by the State Board of Education in accordance with the provisions of Section 340.681 et seq. of the Compiled Laws of 1948."

The Education Association is opposed to the additional language proposed by the School District. It argues that such action is punitive and may deprive the teacher of earning his or her livelihood. The School District seeks to add such language to alert the teachers to the dangers of disregarding written employment contracts.

Recommendation

The Fact Finder recommends the following language: "A teacher who intends to resign must file a written notice of resignation with the School District at least 60 days prior to the termination of the regular school term. The School District may notify the State Board of Education when a teacher under contract fails to perform such contract without just cause. However, if the School District does notify the State Board of Education, it must notify the teacher in writing that it has taken such action."

Length of School Year

The School District has proposed that the school year be lengthened by three days, from 188 days to 191 days so as to allow for some needed in-service training days for the instructional staff. The Education Association proposes to retain the existing contract provision of a 188 day school year. The 188 day school year will include the following 180 student membership days, 184 teacher work days and 188 teacher paid days. The four teacher work days would be August 31 and September 1, 1972 prior to students reporting to school. In addition there will be one work day at the end of the first semester and at the end of the second semester so that teachers can get their work done. The other four days would not be work days but would be paid days - Labor Day, Christmas, New Year, and Memorial Day.

The School District's proposal would include 187 work days plus the four paid holidays or a total of 191 day school calendar.

Currently there is no identifiable in-service staff training programs with the exception of two days of orientation. There is some in-service training conducted on occasion after the school day. The need for in-service training is recognized by both the School District and the Education Association. In the hearing it was suggested by the Education Association that there are possibilities of having in-service training days within the existing 188 school calendar.

The School District's proposal of three additional days to the school calendar represents a 1.6 percent increase in days worked by the teachers.

Recommendation

The Fact Finder recommends that the parties agree to 188 day school

calendar. There are four teacher work days which could be devoted in part to in-service training. Moreover, the parties should begin discussions on what should be included in in-service training programs. For an in-service training program to be effective both administrators and teachers must be involved in the planning.

During the 1972-73 school year, a determined effort should be made to hold in-service training sessions. Teachers and administrators need to keep their skills and knowledge up-to-date in view of the changing forces affecting the education of young people. Teachers in my view would be willing to invest some of their personal time for self-development if there exists mutual respect and goodwill between the School District, administrators and the teachers.

Emergency Dismissal and Closing of School

The Association has proposed the following provision:

"In the event of emergency dismissal or closing of School, such dismissal or closing will be as expeditious as possible for both the students and the staff. The days missed due to such dismissal or closing will not be made up unless so required by law and the accrediting agencies or at the discretion of the School. Such days shall be with pay. Students and staff will report back to School after such dismissal or closing when, in the opinion of the School, both students and staff shall report."

The School District has proposed the following:

"In the event of emergency dismissal of School, such dismissal will be as expeditious as possible for either or both of the students and the staff. The days missed due to such dismissal will not be made up unless so required by law and the accrediting agencies or at the discretion of the School. Such days shall be with pay. Students and staff will report back to School after such dismissal when in the opinion of the School either students or staff or both shall report."

The proposal of the School District is identical with the language of the 1971-72 contract (Article 8 Section G).

The Association introduced into the hearing Parchment School District Policies Salary Payments p. 4141.1, a portion of which reads:

"... In case travel is difficult due to weather a discretionary arrival allowance shall be made to 10:00 a.m. for full pay for the day.

In case it becomes necessary to close any and/or all of the Parchment Schools because of conditions beyond the control of school authorities, employees of the school will report to work unless otherwise directed." (Approved as Revised, December 20, 1971)

The School District recognizes that at certain times some teachers will find it difficult to report for work because of hazardous driving conditions. In its Exhibit IV, the School District noted it currently allows teachers until 10:00 a.m. to report on such days without loss of pay. Moreover it noted "if a teacher chooses to live on a back road or to have a long driveway then it is his or her responsibility to allow extra time to get to work on those days when driving is interfered with by the weather."

One other fact pertinent to this issue is that 40-45 percent of the students are bussed.

Recommendation

With respect to this issue, there are the two proposals plus the School District's policy. It does seem to the Fact Finder that the rule of reason should apply. If the students cannot be transported safely to school, the teachers should not be required to come. The busses are certainly better equipped to travel over snow covered roads than the cars of the teaching staff. Accordingly the Fact Finder recommends that if the students cannot be safely transported to school on a given day because of inclement weather then the teaching staff will not be required to attend school on that day.

Grievance Procedure

There are two issues involved with respect to the grievance procedure.

One is the inclusion of additional language and the second is the time requirements in the several steps of the procedure.

Taking the second issue first, the parties have agreed to bargain over the time requirements at the several steps in the grievance procedure. The School District had proposed a time period of five days. The Education Association stated that five days was insufficient for it to investigate carefully the grievance according to its procedure for initiating formal grievances. The Fact Finder suggested that perhaps a 30 day time requirement will be reasonable. The Fact Finder strongly recommends that the parties negotiate some kind of reasonable time requirement for their grievance procedure.

With respect to the language changes proposed by the School District, the current contract Article 13 Section A states:

"A claim by the teacher or the Association that there has been a violation, misinterpretation or misapplication of any provision of this Agreement may be processed as a grievance as hereinafter provided."

The School District wants to add the following language:

"... except no grievance may be based upon the discharge, suspension, or demotion of a tenure teacher. This exception shall become automatically open for negotiation upon the written request of either the School or the Association if the Legislature shall repeal the law commonly known as the "Tenure Act".

The School District argued that the teacher who is discharged, suspended or demoted has access to both the procedure as provided by the Michigan Tenure Act and by the arbitration clause in the contract between the School District and the Education Association. It therefore wants to restrict the use of the grievance procedure including the arbitration provision by discharged, suspended or demoted teachers who also use the procedure as prescribed by the Tenure Act.

The Education Association is opposed to the additional language of this contract clause. It stated that the teacher would be stripped of his or her rights by such language.

The Fact Finder understands the rationale of the language as proposed by the School District. Under the current contract provision as he understands it, the aggrieved teacher can use both the grievance procedure and the Tenure Act. In other words, if the grievant is dissatisfied with the decision of the arbitrator the grievant can then use the Michigan Teacher Tenure Act.

Recommendation

The Fact Finder strongly recommends that the language of Article 13 Section A be modified to state that "Dismissals, demotions, suspensions and other such grievances which are covered by the Michigan Teacher Tenure Act are excluded from the grievance procedure."

Salary

The Association has proposed the following salary schedule for 1972-73:

BA Minimum - Maximum	7996 - 13,593
MA Minimum - Maximum	8555 - 15,032

The School District has proposed the following salary schedule for 1972-73:

BA Minimum - Maximum	7700 - 13,090
MA Minimum - Maximum	8239 - 14,476

Table I shows the history of BA and MA salary ranges for the School District for years 1968-72 and the salary proposals of the Association and

TABLE I

History of BA and MA Salary Ranges for Parchment School for Years 1968-1972

and

Comparison of 1972-73 School Salary Proposals

YEAR	BA		MA	
	MIN	MAX	MIN	MAX
1968-69	6500	10,775	7000	11,800
1969-70	7000	11,920	7500	13,140
1970-71	7475	12,590	8000	13,847
1971-72	7580	12,886	8110	14,250

1972-73 Proposed

Association	7996	13,593	8555	15,032
District	7700	13,090	8239	14,476
Difference	296	503	316	556

School District for 1972-73. The difference between the Association BA minimum and the School District BA minimum proposals is \$296 and the difference between the Association BA maximum and the School District BA maximum salary proposal is \$503. The difference between the Association MA minimum and the School District MA minimum salary proposals is \$316 and the difference between the Association MA maximum and the School District MA maximum is \$556.

Table II compares the 1971-72 BA salary schedule with the Association and School District BA salary proposals for 1972-73. The differences in these proposals range from \$296 at Step 1 to \$503 at Step 13.

Table III compares the 1971-72 MA salary schedule with both the Association and School District MA salary proposals for 1972-73. The differences in these proposals range from \$316 at Step 1 to \$556 for Step 13.

The Association is concerned about its relative position with respect to its salary structure to other school districts in Kalamazoo County. Exhibits were introduced to show the Parchment Schools in relation to other districts in the County (pp. 29 - 33). These exhibits show that Parchment's relative position has declined and this is of concern to the Education Association. It feels that the Parchment School District is better than some of the other school districts in the County and that the salary schedule should reflect this.

TABLE II

BA Salary Schedule 1971-72 and Association
and

School District BA Salary Proposal 1972-73

1971-72 Current	1972-73 Assoc. Proposal	1972-73 School Dist. Proposal	Difference
\$ 7,580.00	\$ 7,996	\$ 7,700	\$296
7,959.00	8,397	8,085	312
8,338.00	8,797	8,470	327
8,792.80	9,277	8,932	345
9,247.60	9,756	9,394	362
9,702.40	10,236	9,856	380
10,157.20	10,716	10,318	398
10,612.00	11,196	10,780	416
11,066.80	11,676	11,242	434
11,521.60	12,155	11,704	451
11,976.40	12,635	12,166	469
12,430.80	13,155	12,628	527
12,886.00	13,593	13,090	503

TABLE III

MA Salary Schedule 1971-72 and Association

and

School District MA Salary Proposals 1972-73

1971-72	Assoc. Proposal	School Dist. Proposal	Difference
\$ 8,110	\$ 8,555	\$ 8,239	\$316
8,565	9,037	8,701	336
9,020	9,516	9,163	353
9,475	9,996	9,625	371
10,005	10,556	10,164	392
10,536	11,116	10,703	413
11,066	11,676	11,242	434
11,597	12,235	11,781	454
12,128	12,795	12,320	475
12,658	13,355	12,859	496
13,189	13,915	13,389	526
13,719	14,475	13,937	538
14,250	15,032	14,476	556

The School District in its presentation stressed the need to hold the line with respect to salaries. It noted that with the step increases, its proposal for the BA salary schedule gives the teacher an average increase of 5.51 percent. Its proposal for the MA salary schedule provides the teacher an average increase of 5.76 percent. Moreover, the School District stated that its salary proposal will cost the District \$59,000 over last year's salary schedule. Of this amount, \$40,000 goes for step increases and \$19,00 for salary increases. The District in the Hearing did not stress its inability to pay.

The Education Association is also seeking the addition of a MA + 15 semester hours in the salary schedule. The School District has proposed to add \$120 (1.5 percent) to the current base salary, but no MA + 15 semester hours column in the salary index.

Both parties have agreed to retain the same salary index as in the 1971-72 agreement.

The Fact Finder after careful consideration of all the facts recommends the following salary schedule based on the existing salary schedule index:

BA: Minimum - Maximum 7,850 - 13,345

MA: Minimum - Maximum 8,399 - 14,758

One of the important considerations in making this recommendation was the very small percent increase which teachers at both the BA and MA Step 13 would receive under the School District's proposal. In both instances, the teachers at Step 13 would receive a 1.58 percent increase. The Fact Finder's recommendation would provide an increase of \$489 or 3.6 percent for the teachers at BA Step 13 and an increase of \$508 or 3.5 percent for teachers at MA Step 13.

The recommended salary schedule also improves the relative economic position of the teachers in the Parchment School District in the County at the BA and MA minimum and the MA maximum.

The Fact Finder does not recommend either the inclusion of the MA + 15 semester hours in the salary schedule as proposed by the Education Association or the flat sum as proposed by the School District.

Duration

The School District sought a two year agreement with a cost of living adjustment minus 1.5 percent for the second year. The Education Association would have accepted a two year agreement based on the cost of living index.

Recommendation

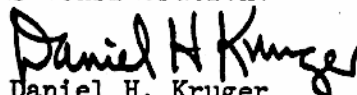
The Fact Finder recommends a one year agreement July 1, 1972 - June 30, 1973. He bases this recommendation on the uncertainty of the situation especially as it relates to Federal wage controls.

Retroactivity

The Fact Finder strongly recommends that the recommended salary schedule be retroactive to July 1, 1972. The Education Association has bargained in good faith and has been working without a contract since the beginning of the school year.

Summary

In summary, these recommendations can serve as the basis for the parties to resolve the issues in impass. The Fact Finder is concerned about strengthening and improving the quality of goodwill among and between the parties. Such goodwill is essential to quality education. The Fact Finder strongly urges that the parties give these recommendations serious consideration.


Daniel H. Kruger
Fact Finder

November 7, 1972