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STATE OF MICHIGAN

DEPARTMENT OF LABOR

BUREAU OF EMPLOYMENT RELATIONS

In the matter of fact finding between the

VAN BUREN COUNTY EDUCATION ASSOCIATION (Petitioner)

and the

PAW PAW PUBLIC SCHOOL BOARD OF EDUCATION (Respondent)

MERC Case No. G93 E-3019

APPEARANCES

FOR THE PETITIONER:

Harold Larsen, MEA Uniserv Director
Gordon McGowan, MEA Snap Bargainer
Laurel Sherburn, Local President
Linda Barkalow, Negotiating Team
Sharon Guritz, Negotiating Team
Jan Bell, Local Vice President
Betty Firestone, Negotiating Team

FOR THE RESPONDENT:

John Manske, Attorney
Tom Bontekoe, Business Manager

FACT FINDING REPORT SUBMITTED BY

Bruce Bigham 5/31/94

Bruce R. Bigham Date

Paw Paw Public Schools

BACKGROUND AND INTRODUCTION

The Petitioner (Van Buren County Education Association/Paw Paw Educational Support Personnel Association) and the Respondent (Paw Paw Public Schools Board of Education), are parties to a collective bargaining agreement which expired on August 22, 1993 (Joint Exhibit #1).

The Respondent employs approximately 180 employees. Within the district, there are four bargaining units which are represented by either affiliates of the Michigan Education Association or the AFL-CIO. The bargaining unit represented by the Petitioner is the only unit without a settled contract for the 1993-94 school year. The unit represented by the Petitioner includes 15 bus drivers and 25 employees in other classifications, typically referred to categorically by the parties, as aides.

Following considerable bargaining and several mediation sessions, the Petitioner submitted a petition for fact finding pursuant the General Rules and Regulations of the Michigan Employment Relations Commission on November 1, 1993 (Joint Exhibit #2). Following the appointment of the fact finder, the Petitioner, at the request of the fact finder, submitted an amended petition with updated information regarding the disputed issues on April 20, 1994 (Joint Exhibit #3), which was followed by the submission of an answer by the Respondent on April 26, 1994 (Joint Exhibit #4).

The hearing in this matter was scheduled on May 4, 1994 at the offices of the Paw Paw Public Schools Board of Education. Considerable evidence and testimony was submitted throughout the one day hearing. As indicated at the close of the hearing, the parties are to be commended for their thorough preparation and presentations.

The parties elected to reserve the right to submit post hearing briefs. The briefs were due postmarked or by FAX dated May 20, 1994, at which time the record in this case was considered closed. A post hearing brief was submitted by the Petitioner.

It is noted with respect to the record in this case, that there were no jurisdictional issues raised by either party.

The issues in dispute, as detailed in the amended petition (Joint Exhibit #3), were acknowledged and reconfirmed by the parties at the onset of the hearing. By joint agreement of the parties, item 17 (Drug and Alcohol Testing for Bus Drivers), was settled prior to the commencement of the hearing and is no longer an issue before the fact finder.

The remaining issues in dispute are addressed below in the order in which they appear on the petition and a recommendation in each area is incorporated accordingly.

It should be noted that the ability to pay was raised by the Respondent. Furthermore, the parties agreed that the relevant labor market for consideration of comparables in this case, with one exception set forth by the Respondent, are the school districts represented by the Petitioner (Van Buren County Education Association). The exception raised and noted from the Respondent, was the need to consider the pay and benefits structure of private sector day care and latch key businesses.

THE ISSUES IN DISPUTE AND RECOMMENDATIONS

1. **BINDING ARBITRATION FOR ALL ISSUES:** The Petitioner seeks to have the present arbitration provision expanded in terms of the issues which can be arbitrated. There is no dispute between the parties, that the terms of the expired contract only permitted arbitration of cases involving the discharge of non-probationary employees.

   In support of its position, the Petitioner submitted considerable evidence by way of the arbitration provision of the other collective bargaining agreements within the district and from those districts represented in the area by the Petitioner (Association Exhibits #2 and #4).

   The Respondent, in it's answer to the fact finding petition, indicated it would accept non-binding mediation as an alternative to expanding the scope of the arbitration provision (Joint Exhibit #4). The Respondent further maintains the parties have been able to resolve problems internally and accordingly, has rejected the expansion of the authority of an arbitrator. The Respondent, under cross examination of the Petitioners local President, did receive acknowledgements that there had about two driver grievances filed over time, which were resolved at steps 1 or 2 and that she was unaware of any aides grievances within the prior four years. There was no testimony or evidence with regard to the number of grievances or arbitration cases in the other support staff units within the district.

   It is clear from the record that the district, through the other collective bargaining agreements, has a more extensive arbitration obligation than it has with the Petitioner. It is equally clear that the other districts represented by the Petitioner have arbitration provisions. It is additionally noted that there is a

variance in the many contracts entered into the record in terms of the definition of a grievance, the issues which are grievable, the scope of the arbitration provisions and the scope of the arbitrators authority (Association Exhibit #2).

The essential issue here is a question of enforcement. There should be little dispute, that in the absence of an agreement to arbitrate during the term of a contract, the contract remains enforceable through other means. In a very confining sense, the Petitioner and Respondent, under the terms of the now expired contract, have elected to defer enforcement to other external sources. These same decisions made at the negotiations table by the Respondent with the two other support staff bargaining units, have reached closure in a different fashion.

The Petitioners and Respondents philosophies with respect to arbitration, as a means of alternative dispute resolution, obviously varies, but appears only to be to the extent of the scope of the issues which can be arbitrated and perhaps as to limitations on the arbitrators authority.

In the long term, the fact finder is of the opinion that limited expansion of the right to arbitrate will not disrupt the historical balance of contract administration or the relationship between the parties. Accordingly, the some what less restrictive language contained in Attachment 1, is recommended to replace Article 8, Section 3 and Step 4.

2. **THE NUMBER OF HOURS IN AIDE POSITIONS:** The Association seeks an amendment to Article 6 (B) with the inclusion of new language which would require the Board to alter it's process of assigning hours to aides. The objective as stated in the amended petition (Joint Exhibit #3) and through testimony is to accomplish and/or require the following:

    1. The Respondent could no longer "break-up" current positions (i.e. upon the resignation of an employee, etc.) unless it would result in the addition of hours to other aides, who are interested in working additional hours within the building, on a regular basis.

    2. When new positions are established, the Respondent would be required to establish the greatest number of hours for each position, up to six and one-half (6.5) hours per day.

3. The Respondent, in general, would be required to establish as many full time employment opportunities for aides, to the extent the unit members within the building where the hours are being considered, have an interest in the additional hours on a regularly assigned basis.

The genesis of the proposed changes, according to testimony, was the belief that the Respondent had realigned and/or reduced hours following the departure of an employee approximately 3 years ago, when the position could, in the Petitioners mind, have been retained at a "full time" level.

The Respondent maintains the management rights provision reserves such scheduling rights to the district.

There is no dispute in the record that the Respondent has extensive and fundamental control of the number of work hours and the scheduling of the foregoing under Article 2.

It is also clear, through the evidence (Association Exhibits #5 and #6) and testimony presented by the Petitioner, that the performance responsibilities of the aides vary significantly through the unit. It is also evident from a reading of the master contract, that insurance benefits and other potential financial obligations would be incurred by the Respondent, if the proposed amendments were recommended. It would also be presumed true by the fact finder, that the Respondent assigns hours, given the job requirements, qualifications, labor time needs, efficiencies and skills of employees.

The fact finder believes that the retention of the ability of adjust hours is fundamental to ability of the Respondent to effectively and efficiently manage it's programs and services. To this end, the fact finder recommends no changes in the present language.

3. **WAGE INCREASES:** The parties are in agreement as to the duration of the contract being one year, despite the fact the former contract expired in August of 1993. The Petitioner has proposed a 3.25% increase in pay, while the Respondent has proposed a 2% increase. The Petitioner has also issued proposals which are still disputed, which also have an economic impact.

The Respondent raises the issue of the ability to pay in

conjunction with the Petitioners wage proposals and other areas with an economic impact. The Petitioner does not dispute the fundamental question of the ability to pay, the impact of the recent finance reforms by the Michigan legislature on the district, the decline in student population, the presence of an $800,000 structural deficit or the mileage history of the district. The Petitioner does however, take exception to the accuracy of certain projections made for the year ending June 30, 1994, general fund equity (Association Exhibit #13). This assertion is based upon claims of incorrect projections the Petitioner believes to have been made in the past. It is the Petitioners belief, that given the cost differentials between the parties economic packages and the existence of the past projection problems, that the Respondent does have the ability to finance the Respondents proposals.

It is the fact finders assessment, that the projection issue was sufficiently explained under direct and cross examination by the districts business manager and that given the overall annual revenues and expenditures during the years in question, that the explanation of the business manager left any remaining differences in the projections within reasonable bounds.

Even more important, the fact finder believes that even if the projections lacked sufficient explanation or was misestimated, that the issue of the $800,000 structural deficit inherent in the 1993-94 budget and it's impact on 1994-95, is clear from the record in this proceeding. The fact finder would accordingly conclude the ability to pay in this case, is a legitimate claim by the Respondent.

As previously stated, the parties concurred with minor exception, that the relevant labor market is inclusive of the districts represented by the Petitioner. The Respondent did however state, that the issue of private sector comparables in the day care and latchkey area, should also be considered.

The Petitioner entered considerable evidence regarding the comparables (Association Exhibits # 1, #3, #7, #8, #9). No exhibits were offered by the Respondent with regard to the private sectors employers.

In general, the above referenced exhibits show that the percentage growth in aide wage increases for 1993-94 ranged between approximately 2.5% to 5% with an average percentage increase of 3.61%. With regard to the drivers, the figures for the same period show percentage

increases between approximately 3% and 5%.

As for the level of wages, the aforementioned exhibits show the driver wages considerably above the average (Association Exhibit #9) and aide wages (Association Exhibit #7) well below the average.

The Respondent entered testimony through it's business manager reflecting that a 3% increase had been budgeted for increases in employee wages within the unit. The Respondent also pointed out that the increases for other employee groups within the district ranged between 2.75% and 3% for the 1993-94 fiscal year.

Based upon the foregoing, the fact finder would recommend that a 2.50% increase in pay be issued to the bus driver rates in Appendix A (Section B-1 and 3) and that the field trip rate be increased by the 2% proposed by the Respondent. This recommendation is based upon, but not limited to, the conclusions with regard to the districts budgetary circumstances and the favorable position within the labor market in terms of driver wages, and the primarily voluntary nature of field trip assignments in an area of non-mandated programs.

With regard to the issue of the aides wage rates, the fact finder would recommend the rates be increased by 3%. Additionally, the fact finder would recommend that the $720 remaining as a result of the difference between the cost of the drivers 2.50% recommendation and the 3.0% budgeted figure for 1993-94, be allocated to the aides classifications, subject to the exception set forth below.

Despite the lack of evidence in the record as to private sector day care and latchkey pay rates, the parties have evidenced through prior negotiations, a need to establish a two-tier provision for Learning Tree Aides hired after December 1, 1990. This clause does suggest an increasing sensitivity to the wage costs in that area due to the nature of the program. Accordingly, the increases for the Learning Tree Assistance hired subsequent to that date, should be limited to 3%.

The general movement of the $720 into the aides classifications is intended to improve the relative standing of the rates within the labor market, while recognizing the need to remain with a budgetary figure for increases within this unit, which is essentially commensurate with other increases within the district for the 1993-94 fiscal year.

With regard to retroactivity, the fact finder would recommend the inclusion of the following statement in the contract:

> Retroactive pay for 1993-94 will be made back to the expiration date of the 1992-93 master contract. Retroactivity payments be restricted to the hours worked by those employees on payroll on the date of Board ratification of the 1993-94 contract. Those former employees who resigned, retired, or have otherwise severed employment, will not be eligible for retroactive pay.

4. **LONGEVITY PAY:** Currently, the drivers and aides with ten or more years of service, earn an additional 10 and 20 cents respectively, in longevity pay beyond the normal hourly rates of pay. The Petitioner seeks an increase in the formula so that all employees within the unit will receive 20 cents after ten years and 40 cents after 20 years.

In support of it's position, the Petitioner offered exhibits showing longevity rates elsewhere within the district and from within the labor market (Association Exhibits #10, #11, #12). Both the internal and external comparisons, show a varying number of years in which to qualify for longevity pay rates (which tend to be based in cents per hour), and range from zero cents per hour to at least 75 cents per hour, depending upon the years of service to the district.

To the extent the Petitioner and Respondent have viewed longevity as acceptable means of compensation in the past, they do not disagree that the threshold level should be at the 10 year level. The fundamental question is the level of pay at ten years and whether the second tier should be implemented at the 20 year level.

While the comparables would suggest the entry level eligibility criteria of 10 years is reasonable, they also indicate that in most instances, a greater yield is issued to the employee through either higher cents per hour or the inclusion of additional tiers within the schedule.

Even though the exhibits would tend to support an increase in some fashion for the aides (particularly in light of the position of the aides regularly hourly rates in the labor market), it is the opinion of the fact finder, that the issue of the financial impact on the Respondent, currently outweighs the need to increase the

schedule. It was for this reason in part, that the $720 referenced above in relationship to the wage recommendations, was directed where it would be of immediate benefit, to the greatest number of unit employees.

The fact finder would not conclude that the drivers longevity schedule should be increased beyond its present level due to the favorable position of the driver hourly rates in the labor market.

Accordingly, given the present financial status of the Respondent, the fact finder recommends no increase in the longevity pay schedule for any classifications within the unit.

5. **LEARNING TREE DIRECTOR'S ASSISTANT STIPEND:** Currently, the assistant position is paid at the Building Aide hourly rate set forth in Appendix A. The Petitioner proposes to establish a stipend for the position, which would require the payment of an additional 50 cents per hour to the employee occupying the position.

While there was no direct comparability data relative to this position, the Petitioner did enter evidence (Association Exhibit #5) and testimony through the current assistant.

The fundamental issue before the fact finder here is whether there is sufficient evidence of higher levels of skills, expertise, responsibility, etc., in the record, when compared to other Building Aides, to warrant the establishment of a stipend. While all the aides and other district employees fulfill essential roles within the district, certain unique positions would evidence the need to reclassified for pay purposes, when compared to jobs of somewhat similar nature.

It is the assessment of the fact finder, that sufficient evidence was presented to support a stipend. Given the Respondent's current financial situation and the nature of the program however, the 50 cents proposed by the Petitioner is excessive. Based upon the foregoing, the fact finder would recommend the inclusion of the following addition to Appendix A (C):

> The Learning Tree Directors Assistant will receive an additional 15 cents per hour. This provision will take effect prospectively from the date of Board ratification of the terms of the 1993-94 master contract. Any employee substituting for the Learning Tree Directors Assistant, will not be

eligible for this stipend.

6. **INVOLUNTARY TRANSFERS:** The remaining issue in dispute regarding the involuntary transfer provision as set forth in number 7 (Section 5) of the amended petition for fact finding dated April 13, 1994 (Joint Exhibit #3). In large part, this section is already under agreement, in that the Respondent has agreed to a just cause standard in relationship to involuntary transfers. The remaining issue is whether there is a Board of Education level review afforded as proposed by the Petitioner, or whether the review is directed to discussion between the parties.

At the hearing it was clarified by the Petitioner, that the involuntary transfer contemplated by the proposed language, is intended to address changes in building assignments within the employees classification and changes of assignments within and outside of a building where a reduction in hourly rates of pay, is possible. It was further conveyed that the proposed change is not intended to address issues associated with layoff and recall.

The fact finder would note that the series of provisions under tentative agreement have been proposed as a new Article 7. It is recommended with respect to the "new" article, that the language be added under the current Article 6 (Vacancies, Transfers and Promotions) since it does deal with generic issues associated with that Article and was not intended by the fact finder, to be included within the scope of the recommendation on arbitration.

Considerable language is already under tentative agreement on issues directly and indirectly related to the involuntary transfer issue. In the Petitioner's testimony and post hearing brief, the issue was basically identified as requesting a Board of Education level review, of administrative decisions involving an involuntary transfer, at the election of the employee.

Currently, there is no dispute the Respondent has the ability to implement involuntary transfers and that contractually, there is no standard for review through the grievance procedure. Additionally, the issue at present is not arbitrable, nor would it be arbitrable under the fact finders recommendation.

The issue of changes in classification can be effected by several staffing related considerations including, by way of illustration, layoff, recall, vacancies, general

assignments, disciplinary measures and temporary transfers to meet short term labor needs. It is also noted that the tentative agreement (proposed new Article 7, Section 1) defines two classifications categorically, which is essentially consistent with the traditional alignment of seniority under Article 5 (Joint Exhibit #1). It is further noted, that Appendix A (Joint Exhibit #1) sets forth four classifications for pay purposes and that with regard to the four aide categories, there is a significant difference in pay between the Learning Tree aides hired after December 1, 1990 and the other classifications.

Regarding the issue of appeal to the Board of Education, there is no disagreement that an employee could address the school board at an open meeting regarding the issue of an involuntary transfer, even in the absence of contract language. It is the fact finders opinion, that to the extent that an employee wants to address the school board on the issue, the law currently affords the option. It is further the fact finders opinion, that the issue of employee assignment(s), is an administrative question which is outside of the policy making role of the school board.

Although not arbitrable under the expired contract or this recommendation, the issue of involuntary transfers will be subject to appeal through the grievance procedure. Furthermore, in that the Board is not contractually involved in the review of other grievances, it is further the opinion of the fact finder, that this issue should not be treated in isolation from the existing internal appeal levels in the grievance procedure.

Based upon the foregoing, the fact finder would recommend the language in Attachment 2, be incorporated into Article 6, along with the other language under tentative agreement.

7. **INSURANCE BENEFIT CONTRIBUTIONS:** The Petitioner is seeking substantial increases in the amount of contributions per month toward hospitalization, tax sheltered annuities and option plans. In addition, the proposal changes the traditional method of adjusting contributions in part, based upon years of service to the district.

The Respondent has proposed to maintain the current distribution schedule of premium dollars, but to increase the schedule by $2.00.

It was noted by the fact finder at the hearing, that there are approximately 2 or 3 individuals who are presently enrolled in health insurance, with the remainder of the unit electing other available options. There is nothing in the record which provides a break down of the elections of the others (i.e. tax sheltered annuities, term-life, etc.) or the amount the 2 or 3 individuals are required to pay out-of-pocket each month to maintain the health care option. It is also difficult to conclude, based upon the record, whether those enrolled in options, have hospitalization through another source.

To the extent this issue focusses itself on the need of employees in general, for hospitalization insurance, there is little question of the importance and significance of the issue, particularly in light of the national attention to the health care question.

To the extent the requested increase focusses itself on purchasing additional insurance options or tax sheltered annuities to supplement the state retirement plan, the essential focus of Appendix B shifts appreciably.

There is extensive evidence in the record on the level of contributions both internally within the district (Association Exhibit # 2) and within the labor market (Association Exhibit # 1, 3 and 9). According the Joint Exhibit # 5, there is no dispute as the cost of $14,198 to implement the Petitioners proposal.

In terms of both the internal and external comparison which can be made from the information in the record, the various exhibits show a great deal of variance in the treatment of the insurance benefit issue in terms of plan coverage, levels of premium contribution, insurance carrier, eligibility thresholds and other matters. The variances can be attributed in all likelihood to the cost implications associated with insurance and other employee related costs.

Given the tremendous variance in the data, the fact finder would not conclude that either the current provisions or the Petitioner's proposal is outside of the framework within which area employers have aligned insurance premium contributions.

The fact finder finds himself in somewhat of a dilemma, in that the underlying need for further increases is unclear. By way of illustration, is the issue a one of need for health insurance, or an interest alternatively, in increasing, for example, the level of contribution for

tax sheltered annuities. The fact finder is inclined to give the greatest emphasis to the issue of the need of the 2 or 3 employees for hospitalization insurance and the cost of the currently available hospitalization plan, given the financial limitations of the district.

Based upon the foregoing, the fact finder would not recommend and increase beyond the $2.00 proposed by the Respondent. The fact finder would recommend as another alternative to the Respondents proposal, that the cost associated with the Respondents proposed $2.00 increase, be calculated and that the dollars be reallocated retroactively, to the expiration date of the expired contract, for the exclusive benefit of those enrolling in hospitalization. No specific figures have been recommended, in that the location and years of service of the eligible employee is not evident in the record. The intent underlying the recommendation, would be to adjust the current structure, by adding a column(s) to the existing schedule in such a fashion, that it would only benefit those 2-3 employees electing hospitalization, as opposed to those electing tax sheltered annuities of other options.

In further recognition of the needs of the 2 or 3 employees for hospitalization insurance coverage, the fact finder would also recommend that the hospitalization plans available for purchase to these employees be extended to include MESSA Supercare 1, the 250/20 Plan, the Limited Benefit Plan or other hospitalization plans presently available and accessible within the district, subject of course to the rules and regulations of the various insurance administrators and underwriters. Despite differences in deductible and co-payment provisions, it is the belief of the fact finder that the differences in monthly premium costs would significantly reduce the out of pocket cost to the 2-3 employees.

8. **VACATION FOR YEAR ROUND AIDES:** The Respondent employs certain aides on a full year basis. These aides are eligible under Appendix C (Joint Exhibit #1), for paid vacations. The Petitioner seeks to increase the amount of vacation time for eligible employees after the completion of five years of service, 8 to 10 days.

There is little by way of comparables in the record on the issue of aides vacation pay. There is extensive evidence, however, with regard to other employee classifications both internally and externally (Association #1, #2, #3). As with longevity and other issues, there appears to be a significant variance in the

number of years of service at various levels and the number of vacation days afforded.

Despite the differences in the nature of the work for the comparables in the record, there does appear to be a significant difference in the total amount of time afforded in vacation time for full year aides within the bargaining unit. This is perhaps attributable in part to a combination of variables such as the nature of the work, the cost implications on the program, the availability of unpaid time off referenced in Appendix C and other paid day benefits (sick leave, holidays, etc.).

Given the nature of the programs affected by the Petitioners proposals and the present financial situation of the Respondent, the fact finder would not recommend an increase in the number of paid vacation days. The fact finder has attempted to address some of the aides needs with regard to the financial package, such as the additional funds to be allocated beyond 3% and the stipend for the Learning Tree Directors Assistant, but given the Respondents current financial status and the nature of the programs impacted, the fact finder is unable to recommend the adoption of what might otherwise appear to be a reasonable demand.

9. **SUBSTITUTING FOR THE HEALTH AIDE:** The Respondent employs health care aides with specialized training in first aide and CPR, which is not required of Building Aides.

The record reflects, however, that the training has been available on a voluntary basis to other unit members under the terms of Article 16, section 7 (Joint Exhibit #1).

The Petitioner seeks to obtain the hourly rate of pay for Building Aides who substitute in the absence of a Health Care Aide. The Health Care Aides receive $7.56 per hour under the expired contract and the rate of pay for Building Aides currently ranges from $5.50 to $7.56, depending upon years of service.

The Respondent maintains that the job postings for Building Aides positions, does require the Building Aide to substitute for Health Care Aides and to that end, the Building Aides were aware of the requirement to perform the services as a condition of their acceptance of the Building Aide position.
There is no dispute as to the Respondents ability to reassign Building Aides as Health Care Aides to cover for absenteeism.

Throughout years of negotiations, the parties have agreed to a number of provisions which are favorable to the unit employees in terms of time off work. These include by way of example, sick leave time, personal business, paid vacations, holidays, funeral leave, unpaid leaves. It is understandable that with this scope of leave benefits, that when employees are absent on a given day, that the Respondent may be required to reassign aides to meet it's labor needs.

Given the extent of paid days off available to employees, it would seem a reasonable quid pro quo, that the district should not be required to pay, for example sick leave time at the rate of $7.56 to a Health Care Aide, and be contractually required to pay a higher hourly rate to a person reassigned to cover for the absent employee.

The fact finder would accordingly, not recommend that the proposal of the Petitioner be adopted on this issue.

10. **LOST HALF DAYS:** Through the negotiations with the Respondents teachers bargaining unit, the student calendar is established. Within the calendar, there are a number of half-days of student instruction. On these half-days the length of the work day of certain unit employees, whose work schedule is influenced by student attendance, has been shortened, resulting in a reduction in pay.

The Petitioner seeks to continue what it states is a "practice" over the last 2-3 years of having aides (with the exception of the Learning Tree Aides who don't work on half-days according to testimony) report to work for the full day and that the drivers be provided with paid inservice to offset the loss of work time (i.e. shuttle runs, the vocational education run, etc.) and therefore income attributable to the half-days.

Testimony reflects there were about 7 such days in 1992-93 and 10 days in 1993-94.

The Respondent does not dispute the financial impact on the unit employees, but maintains it has the right to schedule employees consistent with it's labor needs, under Article 2 (Joint Exhibit #1).

The essential issue here is the claim of a "practice" with respect to certain aides, which the Petitioner claims to have developed over the prior 2-3 years and the

extension of certain entitlements, to the drivers. It appears clear to the fact finder, that the Respondent has sufficiently retained the ability to schedule it's employees under Article 2 in relationship to aides and drivers and that the issue of scheduling options available to the Respondent, should not be commingled with claims with respect to the existence of a "practice", absent some expressed provision within the contract upon which the claim could be based.

The essential consideration in the scheduling of employees is the Respondent's need for services or assessment as to the need to provide inservice training to it's employees. The fact finder would not therefore, recommend the position of the Petitioner be adopted.

11. **LENGTH OF THE PROBATIONARY PERIOD:** The expired contract contains a probationary period of 60 calendar days, which is set forth in Article 5, section 2. The Respondent seeks to have the probationary period extended to 90 days.

In it's amended petition (Joint Exhibit # 3), the Petitioner indicates no problem with extending the probationary period, provided the Respondent accepted the Petitioner's proposal on binding arbitration.

There is considerable evidence in the record (Association Exhibit # 2 and 4) which contain information regarding the length of probationary periods both internally within the district and within the recognized labor market. The data reflects probationary periods are common, but that they do vary in length. Although there is some lack of clarity in some of the exhibits as to whether the term days, refers to work or calendar days, the probationary periods tend to run between 45 and 120 days.

The parties do not dispute the necessity and importance of a probationary period. It provides the Respondent with a relatively brief period in which to assess the employee for continuation within the work force. It similarly provides a semblance of reduced liability for representation on issues of discipline and discharge, in that probationary employees are generally not covered by the just cause standards and such issues are typically, as here, not subject to the grievance procedure.

The fact finder believes the of the proposed increase from 60 to 90 calendar days is in order. The fact finder would however suggest the issue be amended from calendar days versus work days, which will have the same essential

effect and to adjust for absences in order to provide a reasonable opportunity for assessment. The following language is therefore recommended to replace Article 5, section 2:

> All new employees will be on probation for their first sixty (60) scheduled work days and during this period, shall have none of the benefits of this Agreement, except those pertaining to the wage schedule. In the event the employee misses any scheduled work time, the probationary period will be extended accordingly. The Employer shall have the right to terminate a probationary employee in it's sole discretion, without that employee having recourse to the grievance procedure.

This concludes the fact finders discussions and recommendations on the issues in dispute. The parties are reminded that the fact finders report is not binding upon either party under law or the Commission's rules, and that the report is a public document.

It should be further stated, that the recommendations in the report are not intended to be applied retroactively by the parties, except as stated therein.

The fact finder can most assuredly appreciate the interests and needs of the employees within the bargaining unit in terms of the improvements sought. This report and the recommendations contained herein, recognize their needs, but are required to be balanced against the long term interest of cost control, given the economic variables at play in this case. With the adjustments in the means by which schools in Michigan are funded, the nature of certain programs and services and the upcoming amendments to the Public Employment Relations Act, it was the fact finders intention to arrive at the best balance possible, considering both the number and impact of the disputed issues.

The fact finder would hope that the recommendations serve as a basis for further discussion and agreement between the parties on the terms of the 1993-94 contract year.

The fact finder does not retain jurisdiction over any issue in this case.

ATTACHMENT 1--GRIEVANCE ARBITRATION

Section 3: No employee who has fulfilled the probationary period set forth in Article 5, Section 2, shall be disciplined (including warnings, reprimands, suspensions) without just cause.

Step 4: Only the Association may process a grievance to Step 4. If the grievance is not satisfactorily resolved at Step 3, the Association may submit the grievance to arbitration before the American Arbitration Association in accordance with it's rules, which shall likewise govern the arbitration proceeding. This submission shall be made within fifteen (15) days of the receipt of the disposition in Step 3. Within the limits of judicial review and the restrictions on the authority of the arbitrator set forth below, the decision of the arbitrator shall be binding upon both parties.

The fees and expenses of the arbitrator shall be shared equally by the parties in cases involving the discipline or discharge of employees who have completed the probationary period under Article 5, Section 2.

In other cases, the Association, as moving party to the grievance, shall assume the cost of the arbitrators fees and expenses as well as any filing fees with the American Arbitration Association, should the parties be unable to reach agreement on an arbitrator.

The arbitrator shall have no authority or power to:

1. Add to, subtract from, disregard, alter, amend or modify in any manner, any of the terms and provisions of this Agreement.

2. Rule on an issue for which a remedial procedure exists by law to pursue a remedy (for example, through the Michigan Employment Relations Commission, the Equal Employment Opportunity Commission, the Wage and Hour Division of the Department of Labor).

3. To rule on any issue involving probationary employees, including but not

limited to, the discipline of the probationary employee.

4. Any matter involving the interpretation or application of Articles 2, 3 (Section 5, 6 and 8), 6, 10 (Section A-2), 12, 13 (Sections 1 and 3), 17, or 18.

5. To issue an award involving back pay for a non-probationary employee for amounts in excess of actual lost wages.

6. To issue an award directing payment in relationship to cases where as continuing pay related grievance is upheld, for a period of more than four (4) days from the submission of the grievance at Step 2.

Notwithstanding the expiration date of this contract, any grievance processed at Step 1 during its term, may continue to be processed, subject to the limitations set forth in Step 4. In the event the contract expires, no otherwise arbitrable grievance processed at Step 1 after the expiration date of the contract, shall be processed to Step 4.

ATTACHMENT 2--INVOLUNTARY TRANSFERS

Section 5: Involuntary transfers may be necessary to meet the staffing needs of the district. It is agreed, that involuntary transfers will only be made for reasonable and just cause. At the request of the affected employee(s), a meeting will be conducted to discuss the reason for the transfer.

Involuntary transfer for purposes of this provision, refers to changes in building assignment or changes in classification within or between buildings, which results in a reduction in the hourly rate of pay. Involuntary transfers do not include any assignment changes made as a result of the layoff and recall procedures in Article 7.

Except as set forth in Section 5 (B)(a) and (b) below, employees who are involuntarily transferred, shall be placed on the wage schedule of their new classification, according to their anniversary date.