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## FACT FINDING REPORT AND RECOMMENDATIONS

In Relation to a Dispute )  
Between )  
Portage Township Schools, (Houghton) )  
And )  
Portage Township Education Association ) James T. Dunne

Michigan State University  
LAUD  
RELATIONS

### Preliminary Statement of Facts

The undersigned was appointed by Mr. Philip Weiss, member of the State Labor Mediation Board to hear and make findings of facts concerning the above dispute and to make such recommendations as appeared appropriate. This appointment by Mr. Weiss was by letter dated October 2, 1967.

The fact finding hearing itself took place on August 31 and September 1, 1967. At the conclusion of the fact finding hearing the undersigned suggested to the parties that there appeared to him to be a basis for settlement without a formal fact finding report. After a long mediation session lasting until 2:30 a.m., September 1, 1967, the parties had reached apparent settlement of all their differences. The three issues which had been involved in the fact finding hearing itself included (1) salary schedule, (2) "retroactive" insurance premiums, and (3) coaches stipends.

At no time during the fact finding hearing itself nor during the discussions leading up to settlement of the above items of dispute was there any suggestion that there existed a dispute concerning over-the-schedule rates for certain

Portage Township Schools

counselors. As the parties were checking off the items of agreement at the very end of the settlement process, the representative of the Association mentioned that the head counselor and part-time counselor were to continue to receive over-the-schedule rates. This brought a response by the superintendent to the effect that the School Board did not agree to continue such over-the-schedule payments. It was obvious that the parties were tired after the long hearing and equally long mediation discussion, and that little likelihood existed that the counselors' matter could be settled that night. Accordingly, the undersigned suggested to both parties that they get a good night's sleep and then come back and settle the matter between themselves. There did not appear to be any reason for the undersigned to remain at the hearing, for this single issue was one that the parties should have been able to settle by themselves. And besides the undersigned had been appointed as fact finder in another district to take place the following day, and it would be impossible in any case for him to remain for further discussion at that time. Accordingly, he left.

As it turned out the parties were unable to resolve the dispute and the first day or two of school found the teachers not in their classrooms in protest over the failure to settle this single matter. After considerable discussion between the parties including the attorney for the School Board, it was agreed that the following question would be presented to the fact finder at a later date for final and binding determination. The specific question to be decided,

carrying the signatures of one of the aggrieved, who was also a member of the negotiating team, another member of the negotiating team, and the Board attorney follows:

"During the school year 1967-68 should the School Board continue to pay \$900.00 above the regular salary schedule to Mr. Benaglio the full-time guidance director and \$450.00 above the regular salary schedule to Miss Vivian, part-time counselors, currently employed by the board? If the answer to the above question is not a flat "yes" or "no" then what should the compensation of our full time guidance director, Mr. Benaglio and our part-time counselor Miss Vivian be?"

Sept. 6, 1967 - Anthony Benaglio, (one of the aggrieved)  
W. Brotherton, (member of negotiating team)  
Mr. Vairo, (attorney for school board)

The hearing concerning the above issue was held Tuesday, November 28, 1967 at the school in Houghton. At the outset of the hearing one of the questions which arose was whether or not the undersigned was to decide the above stated issue for a period of unlimited duration beyond the expiration of the current collective bargaining agreement between the parties. All parties agreed that the above quoted statement of the issue is a correct one, but it still remains for the undersigned to determine whether or not this report and recommendation is to be binding on the parties for a period beyond the expiration of the 1967-68 school year and the current collective bargaining agreement.

Decision on this Issue

Since the undersigned is required to make a threshold decision as to this issue, he believes it best to do so at the outset and to deal with the merits thereafter.

It should be observed that the agreement of the parties above is that the question to be decided (whether or not the School Board is to pay \$900.00 above the present salary schedule to Mr. Benaglio, the full time guidance director, and \$450.00 above the regular salary schedule to Miss Vivian, the part-time guidance counselor) is limited to "the school year 1967-68". This is clear from the first words of the agreement to have this matter finally determined by the undersigned who cannot without ignoring this limitation extend the terms of his decision and award beyond the period specified. Moreover, it should be observed that the parties have a collective bargaining agreement, which itself expires at the end of the 1967-68 school year. It is surely not suggested that the question of over-the-rate payments or any other term of the existing collective bargaining agreement will not be open for negotiation prior to the expiration of the current agreement. The terms of a collective bargaining agreement, and of this agreement, to arbitrate the unsettled issue, are equally coterminous with the expiration date of the current agreement. The same is true with respect to this decision and award. The undersigned believes that the Association has overlooked this significant rule and that it would no more want the rule to be different than would the School Board. Both parties

must be free to negotiate all questions raised by either party when the agreement is open for negotiations. For the above reasons, the undersigned must hold that the decision on the merits is limited to the expiration of the current collective bargaining agreement. In any case, authority is limited to such decision.

#### Facts Concerning the Dispute

Mr. Benaglio was employed by the School Board under an earlier administration for the school year 1963-64 as director of guidance. For this extra responsibility he was paid \$900 over the then existing teachers' rate at his step in the schedule. He continued to be so paid during the years 1964, 65, and 66. This dispute concerns whether or not he should continue to be paid the \$900 extra stipend for the year 1967-68.

At the time of Mr. Benaglio's being hired into the district, the other grievant in this dispute, Miss Elizabeth H. Vivian, was serving as part-time counselor. And when Mr. Benaglio's extra \$900 stipend was fixed, Miss Vivian was granted a \$450 extra stipend for half-time counselor. This extra stipend for her has continued from 1963 through 1966 and the dispute also concerns whether or not she should continue to receive the extra \$450 stipend for half time counseling for the year 1967-68.

It is difficult to rationalize the precise figures arrived at for Mr. Benaglio and Miss Vivian under the prior administration. There is a discrepancy which the School Board is unable to explain as to the total salary and how

it was arrived at for each of these two individuals. At the time Mr. Benaglio was first hired, Miss Vivian's increase was put into effect. It is conceded, however, that each has for years received respectively \$900 (Benaglio's stipend), and \$450 (Miss Vivian's stipend) for the counseling responsibilities.

It appears that these extra amounts did not come into question until May of 1967 during collective bargaining negotiations for the current agreement. Mr. Wolck, the superintendent, raised the question at that time but apparently it was not pursued during the balance of negotiations and was not specifically mentioned as an item of disagreement at the time fact finding was requested by the Association. The only three items mentioned were those above related; "salary schedule, two retroactive insurance premiums, and coaches stipends". At no time during the fact finding hearing did the School Board raise any questions concerning over-schedule rates to counselors and despite the fact that the Association made an extensive presentation concerning the three named items and did not mention the counselors' stipends, the School Board neither in cross-examination nor in direct presentation of its own case alluded to guidance counselors' stipends as being a matter in dispute. As related above, it was only after all items had been discussed during mediation following the close of the fact finding hearing that this issue was introduced.

#### Association's Position

It is the position of the Association that when Mr. Benaglio was hired he was granted the extra money for counseling because the school did not then

have a counselor full time and was in need of one. The Association asserts that he was openly given the \$900 extra stipend without any discussion and that it became a part of the terms and conditions of his employment from the very beginning. Since this has continued for four years, the Association contends that it is improper for the Board to raise this question now since it became a condition of Mr. Benaglio's employment which was at no time relinquished either by him or on his behalf by the Association in collective bargaining.

The same position essentially is taken with respect to Miss Vivian's extra stipend. Her adjustment was made at the time of Mr. Benaglio's employment, has continued unchanged since, has never been relinquished and, therefore, is a condition of employment which should be continued.

#### School Board's Position

The Board's position is that counselors should receive no more compensation than regular classroom teachers with like training and experience. It alleges that classroom teachers' responsibilities are numerous and exacting, and that the counselor has a relatively "unstructured" work day. The Board has made an inquiry of seven school districts in the area asking the following question, "Is your counselor paid according to the regular teacher salary schedule?" In all the seven districts to which the questionnaire was sent the answer was "yes". The responses show that in all instances no extra stipend is paid for counseling beyond the salary schedule, except in those cases where

the counselor is expected to and does perform such work during the summer months. On the other hand, the Board reports that Benaglio's stipend for counseling alone is \$900 and no requirement is made that he be present during summer months. His contract indicates that he is on a 9 1/2-month schedule.

The Board says that during negotiations it made numerous efforts to settle the counselor salary problem, all of which were rejected by the Association. These offers were as follows:

1. Guidance director shall receive \$600 above schedule if scheduling assistance is given to the high school principal for one week during the summer. If such assistance is not given, the payment shall be \$450. Counselors who devote less than their full day to guidance and counseling activities shall receive \$325 above schedule. (See Exhibit 4.)
2. Guidance director shall receive \$900 above schedule if scheduling assistance is given to the high school principal for two weeks during the summer. If such assistance is not given, the payment shall be \$500. Counselors who devote less than their full day to guidance and counseling activities shall receive \$250 above schedule. (See Exhibit 5.)
3. Mr. Benaglio will continue to receive \$900 above the present schedule for his responsibilities as both head of the guidance department and full-time counselor. When he reaches the top step, he will revert to the regular schedule. All guidance and counseling personnel whose responsibilities involve less than a full day of guidance and counseling shall receive no compensation. (See Exhibit 6.)
4. During mediation, and also during fact-finding, we discussed the possibility of red-circling Mr. Benaglio's salary.
5. We also presented a proposal to the teachers' negotiating team that involved having Mr. Benaglio receive \$900 above the present schedule for his responsibilities as both head of the guidance department and full-time guidance counselor. When



he reaches the top of the salary schedule, the payment for this responsibility shall then be \$200 per year. All guidance and counseling personnel whose responsibilities involve less than a full day of counseling shall receive \$100 above schedule.

The Board agrees that Benaglio should receive \$200 as head of the guidance department, but no more for counseling than is called for in the schedule. This, however, would mean that he and Miss Vivian who perform counseling would be reduced from their present over-the-schedule rates.

#### Discussion and Decision

It must be remembered that this case comes to the undersigned as a request by both parties to resolve a dispute by fixing the term of a contract. It amounts to a request for substantive arbitration as distinguished from interpretive arbitration. The opportunity was open to both parties to raise any and all questions separating them: first in collective bargaining, then in mediation, and finally in fact finding, during the negotiation period leading up to the current agreement.

When an arbitrator is asked to make a substantive award re-fixing the terms of a collective bargaining agreement, he must take into account factors which he would not be permitted to do if he had before him a collective bargaining agreement which simply required interpretation. He must consider, for example, whether the party who is asking for a reduction in rate (in this case) raised and kept alive that question at every opportunity presented to it to do so. He must likewise consider the equities of the situation so far as both parties are

concerned. He must ask himself whether or not, given the facts of the case, one or the other party had the greater right to expect its position to be upheld by him. In short, he must consider what, in the broadest sense, is the fairest solution of the problem before him. He must not permit a situation to occur in which an outright inconsistency would result between his award and the balance of the collective bargaining agreement.

Considering all of the above, the arbitrator is persuaded by two facts: one is the failure of the teachers to make a specific demand respecting counselors' stipends over the rate schedule negotiated by them. They should realize that it is not enough to rely upon the simple presence of a pre-existing condition of employment as a basis for assuming that such condition will continue to exist in the absence of collective bargaining which will insure its continuance. The second fact which disturbs the undersigned is that although the School Board at one time raised the question as to the elimination of counselors' stipends, it did not persist in this demand. It is true that the matter was discussed during negotiation, but it is not clear that it was pursued to the point that the Association could reasonably conclude that the matter had not been dropped. It is certainly clear to the undersigned that the matter was not raised before him during the fact finding hearing despite the fact that a complete opportunity for presentation of the respective positions of the parties was given. Considering these two major factors in relation to each other, the undersigned must determine which outweighs the other. He agrees that the Association should have made perfectly clear its intention from the outset of

negotiations to insist upon the retention of counselors' stipends, particularly in view of the fact that it was negotiating a full salary schedule for all teaching personnel. On the other hand, the School Board cannot fail to persist in a demand which it claims it made, and then appears to have dropped, and now come before the undersigned asking that he consider it to have been a continuing demand by the School Board. There is a serious problem of apparent waiver in such action. This is particularly true since the opportunity to bring this to the attention of the undersigned existed not only throughout the long hours of fact finding but even during the period of mediation which followed and which brought agreement on all matters save this.

The undersigned believes that it would be an injustice at this stage to agree with the School Board that it should be permitted to eliminate the stipends presently being paid Mr. Benaglio and Miss Vivian during the year 1967-68. He believes that the correct time to bring this matter to the Association's attention is during negotiations for the 1968-69 agreement.

#### Recommendations

It is the recommendation of the undersigned that the counselors' stipend of \$900 to Mr. Benaglio and \$450 to Miss Vivian should be continued during the life of the 1967-68 agreement. If it is the desire of the School Board to eliminate or reduce these mentioned stipends during the 1968-69 agreement, it should make the appropriate demand at the appropriate time, namely, during negotiations for the 1968-69 agreement; and if the matter should proceed to

fact finding, it should make its full position clear at that time. Much of the information contained in the Board's position would be more properly presented to a fact finder concerned with 1968-69 negotiations rather than to the undersigned who was not given the opportunity as fact finder to consider them in relation to the 1967-68 agreement. The Association should clearly understand, however, that this recommendation, which is binding on both parties, is not to be taken as extending beyond the expiration of the 1967-68 agreement, nor as prejudicing demands by either party during 1968-69 negotiations.

Dec 11, 1967  
DATE

James T. Dunne  
James T. Dunne