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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

In the Matter of the Fact Finding between

Swartz Creek Community Schools

-and-

Swartz Creek Education Association

LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

REPORT OF FACT FINDER

Application for fact finding was filed by the Swartz Creek Education Association, hereinafter called the Association, dated September 10, 1970, and the undersigned was appointed Fact Finding Hearings Officer by letter of the Employment Relations Commission dated September 15, 1970.

Pursuant to notice duly given, hearings were held under Section 25, Act 176 of Public Acts, 1939, as amended, and the regulations of the Commission.

In the course of the hearings, each of the parties presented its respective position in regard to a number of unresolved collective bargaining issues. This report will review each issue separately, followed by a recommendation thereon. The parties agreed that 3 items set forth in the application for fact finding were no longer in contention; these were the no-strike, no-lockout clause;

Alan Walt

deductions in pay and the question of placement of working conditions in the master agreement.

### ARBITRATION

#### POSITION OF THE ASSOCIATION

The Association seeks the inclusion of binding arbitration in this contract. It notes that the Board at one time agreed to the concept of binding arbitration as previously administered by the Employment Relations Commission in the guise of binding fact finding. However, since March of 1969, the Commission has not offered this service and the Association believes teachers are left without a reasonable final step in the grievance procedure.

It points to the following positive features of arbitration. The process is one which is readily available, relatively inexpensive and is a private matter facilitating the amicable resolution of issues. It permits the selection of individuals experienced in employer-employee relationships to serve as impartial arbitrators, and accords to the teachers due process which does not exist when the Board sits in judgment of matters arising under a contract to which it is a party. The Association points out that the teacher has much at stake in his work as a result of formal study and preparation and his years of experience. The arbitration process provides a safety valve, often lacking in the courts, to insure the settlement of grievances. In regard to the latter

point, the Association has recently been a party to 2 court proceedings, one involving payment of x-ray costs, and the other dealing with the Board's dress code. The first case had been pending for over a year and, in the second matter, a federal judge "blistered" the Association for bringing the question into court.

#### POSITION OF THE BOARD

The Board does not oppose the concept of or need for dispute settlement. It acknowledges the fact that it should not sit in sole judgment of questions arising under the contract. However, resolution of grievances arising out of the contract should rest with the courts, which is the proper body to interpret and apply the law of the contract. Only in this manner can the vital interests of the people of the district be protected.

The Board is aware of instances where an arbitrator's award exceeded the terms of the contract and the court has, nevertheless, held that since the parties agreed to be bound by the award, no further relief is possible. For these reasons, the Board rejects the demand for arbitration.

#### FINDINGS

It is not uncommon for Boards of Education to have some fear of the arbitral process based upon a belief that authority properly extended to the Board would be unlawfully delegated to a single individual not responsible to the citizenry. Such apprehensions are

unfounded since the parties to a collective bargaining agreement have negotiated the terms and provisions of that contract; it is a lawful document which cannot be said to constitute a delegation of Board responsibility. Therefore, any interpretation of the terms and provisions of the contract by an impartial third party does not constitute a delegation of power but rather, provides for the interpretation and application of the terms of that agreement. In other words, the arbitrator functions within the four corners of the contract to which the parties have agreed.

The Board cited no specific case when it charged that arbitrators exceeded the terms of the contract but relief was denied by the courts. I have no doubt that there have been -- and are -- Boards reaching this conclusion after receiving an adverse arbitration award. But that does not establish that the arbitrator exceeded his authority; it constitutes a judicial determination that the arbitrator has acted within the contract. No doubt there are Boards which believe judicial determinations of contractual questions to be incorrect; it is to be expected that one of the parties will always have such feelings. The legal point here is that if the arbitrator exceeds his authority under the contract, that is, his express and stated jurisdiction, his award is subject to court challenge and will be set aside, as shown in many reported court decisions.

By law, teachers are not permitted to strike. If the collective bargaining process is to be meaningful to both sides involved

therein, and subterfuge is to be avoided, inclusion of an arbitration clause is the best way the Board can show the teachers that they intend to deal fairly with them.

The fact that the Association can point to two pending cases in which the judicial process has failed to provide a timely resolution to contract issues is the very reason arbitration has found its way into labor management agreements in both the private and public sectors. Court proceedings are involved, lengthy and extremely expensive. The parties encounter tremendous docket delays and, more importantly, judges disdain what they consider "minor" issues. Furthermore, to delay a decision on questions of contract interpretation is to deny to the teachers an effective and meaningful remedy. The reluctance of the Board to accept an arbitration clause, therefore, reveals its unwillingness to seek prompt solutions to teacher grievances.

#### RECOMMENDATION

It is my recommendation that the contract adopted by the parties include arbitration as the final step in the grievance procedure. There is no reason why the arbitration clause cannot be drafted to limit the arbitral process to the interpretation and application of the terms of the collective bargaining agreement with express direction that arbitrators shall not add to, modify or amend the contract in any way.

## CLASS SIZE

### POSITION OF THE ASSOCIATION

The Association proposes that class size limits in grades kindergarten through third be lowered from the present maximum of 33 to 28 students. Study and research have conclusively established that smaller class sizes in the early elementary years benefit both student and teacher. It has been found that in larger classes, greater aggressiveness and poorer relationships exist between pupils. Teacher contacts with the individual student is much higher where smaller class sizes exist, which results in a greater creative, dramatic, and social experience for the students. Of equal importance is the matter of teacher morale. The larger the class size, the greater the teacher's responsibility in regard to discipline and guidance. At a certain point, effective teaching is not possible and the teacher's efforts are frustrated.

Nationally recommended standards for classroom size reveal that the Association's proposal is quite reasonable. A review of class sizes in K through 3, as of September, 1970, indicates that only in the second grade will a problem exist because there are presently 10 classes with more than 28 pupils. In this one instance, an additional teacher should be hired and another second grade class created.

### POSITION OF THE BOARD

The Board has genuinely sought to reduce class size. As a

result of the recommendations of a fact finder, a maximum class load of 33 students in grades K - 5 was established. In addition, it was agreed that any teacher assigned to a class with more than 33 students will receive additional compensation.

The Board has gone to the electors 3 times since the last contract for millage and bonding authority; there were 3 bond and 2 millage elections held between March and December, 1969. All issues were defeated. As a result, the district finds itself in a strained financial condition in meeting the requirements of its students. It was forced to make substantial cuts in the educational curriculum by eliminating certain programs. This was done without increasing class size to the maximum of 33. Furthermore, the district is presently a year and one-half behind in its building program because of the failure of the bond issues. In short, the public is in a millage revolt, and the Board cannot promise conditions which cannot be met.

The district has had a tremendous growth in the past 5 years -- 53.24%. The enrollment in 1964 was 3,214; in 1969, it was 4,931. Conservative estimates, made in accordance with state-provided formula, indicate that the enrollment for the 1974-75 school year will be approximately 6,700 students.

#### FINDINGS AND RECOMMENDATIONS

The district's enrollment for the present year is 5,093, or less than the Board's previous estimate of almost 5,300. Nevertheless, the record shows that the Board has diligently sought to obtain

operating millage and funds for capital improvement from the electorate but has been turned down repeatedly. It is also noted that the Board has not abandoned its attempt for millage since it anticipates an election next year and for 2 or 3 years thereafter.

On the other hand, the fact finder agrees with the research and recommendations of the Association urging the adoption of smaller class sizes, especially in the early elementary grades. While there may be a number of ways to effectively increase the educational experience, certainly smaller class size is one of them. Nor can the adverse affect of large classes on teachers be underestimated; without question, this area involves working conditions subject to negotiation between the parties.

Nevertheless, it is my finding that even with millage and bonding setbacks, the Board has sought to keep class sizes at a minimum. In the present school year (1970-71), as of September 20, 1970, there were only 2 kindergarten classes, five 1st grade classes, 10 second grade classes, and three 3rd grade classes carrying enrollments over 28. At the kindergarten level, there are 2 classes of 30 students each; in the first grade, there are 2 classes of 29, 2 classes of 30, and one class of 31; in the second grade, there are 5 classes with 29 students, 3 classes with 30, and 2 classes of 32; and in the third grade, there are 3 classes of 29 students.

It is my recommendation that the contractual maximum as established in the prior contract is a reasonable requirement and



should be continued in the present contract. However, it is also my finding that the so-called column B figure for K - 3, that is, the point above which effective learning is inhibited, should be reduced from 30 to 28 in the contract. Although the Board is doing all things possible to obtain additional millage and capital improvement funds, it is recommended that the amount paid to a teacher for each student over the maximum of 33 in the class be increased to \$300. It may then become more economical to hire additional teachers and create smaller classes than to pay the "contractual penalty".

#### SPECIAL SERVICES

##### POSITION OF THE ASSOCIATION

In the negotiations leading to the 1968 collective bargaining agreement, the Association made certain demands concerning the creation and/or expansion of special service programs. While these demands were not met, the Board promised to develop a plan of programmed improvement for special services during the 1968-1973 period. That program has not been developed nor have any steps been undertaken to put it into effect.

The Association believes that the special education plans and programs it now proposes are essential to the overall educational quality of curricula offered in the district. Without these programs, pupils are literally shortchanged since it is essential in today's world that education extend beyond the traditional reading, writing

and arithmetic concept. For that reason the Association proposes the following:

#### ART

A 1 hour period weekly with qualified art teachers in grades K - 6.

#### PHYSICAL EDUCATION

Two 1 hour periods weekly for grades K through 5 with qualified gym teachers (no physical education program presently in the district at this level).

#### LIBRARY

At the elementary level, there should be one 30 minute period per week with qualified librarians. The library should contain a minimal of 10 books per student, with one librarian for each 500 students. In addition, a general improvement in the physical facilities of the library is essential in the district.

#### MUSIC

One 30 minute period for music, three times a week in grades K - 6, is recommended.

#### REMEDIAL READING

The adoption of a remedial reading program with enough qualified teachers so that each load does not exceed 45 to 50 students.

#### POSITION OF THE BOARD

This area cannot be divorced from fiscal considerations in

the district. In June of 1970, the electorate approved 3 mills for operations; however, this money was needed for at least a year before that date, and the Board has utilized it to restore most of the special services previously eliminated because of the lack of funds. It is also taking steps to reestablish classes in all of these areas together with some new ones.

It is the Board's position that this area does not belong in the collective bargaining agreement. These questions are basically for Board determination, and it is well aware of its responsibilities to the citizenry. Nevertheless, following the prior fact finding and based upon recommendations therein, the Board set forth its position that it was in agreement with the general goals of the Association and, further, agreed to accept the Association's recommendations "as a framework for improving" the special services program. In this regard, the Board agreed to develop "a plan of programmed improvements designed to show significant progress during the period 1968-1973". It denies the Association's claim that no steps have been taken to implement this program; it was only because of the failure to achieve millage that more steps have not been taken but the Board's good faith cannot be challenged in this area.

The Board recognizes that the area of special services involves curriculum development and that faculty should have a role therein. While it agrees to continue working with the teachers, it will not contractually adopt specific standards.

## FINDINGS

While not fully set forth above, it should be noted that the Association submitted supporting data and research for each of the special services programs it has proposed. In reviewing that data, I am convinced that each of the programs would be beneficial to the district; it is difficult to justify an educational program which completely omits physical education programs at the early elementary level, especially when facilities are present in each building. The same can be said for specialized programs in art, music, remedial reading and library.

Based upon the Association's proposals, it appears that approximately \$270,000 and 22½ teachers or other qualified personnel will be necessary. The Board indicates that it just does not have these funds at the present time, but will continue to diligently seek them from the citizenry. It further indicates its continued agreement with the goals of the Association but adds that it, too, has always been adamant in seeking these programs for the benefit of the students. On the other hand, the Association does not address itself to the question of the additional funding necessary for these special services but takes the position that programs should be contractually adopted since they are necessary, and the Board will then be able to seek millage to support them.

I do not agree with the Association's rationale on the last point. Basic responsibility for providing the programs in question

rests, I believe, with the Board. None the less, it is also my belief that the teachers do have a vital interest in curriculum development and should contractually take part therein. It is therefore my

#### RECOMMENDATION

That a curriculum or professional growth and development committee be established by contract for the purpose of researching and devising programs, changes, and modifications in programs in all areas of curriculum, not merely special services, and that such committee be composed of faculty and administration members. Furthermore, that such committee should not be weighted in favor of the administration since the Board will retain final authority in the area. Provision should also be made to allow the report of the committee to be presented to the Board whenever a certain percentage --  $2/3$  or  $3/4$  -- of faculty members thereon so indicate. This will assure that the faculty's feelings on questions of curriculum development as set forth in a minority report will be presented to the Board. It is believed that Boards of Education do not desire to be isolated in these days of educational change but will want to be involved and receive the views of faculty.

#### SALARIES

#### POSITION OF THE ASSOCIATION

The Association proposes a base salary for a teacher with

a bachelors degree in the amount of \$8,050. This will also serve as the anchor point of the entire salary scale since it also proposes both vertical and horizontal increments at 5%. This will result in the following minimum and maximum salaries:

BA minimum - \$ 8,050

BA maximum - \$12,489

BA plus 18 minimum - \$ 8,453

BA plus 18 maximum - \$13,769

MA minimum - \$ 8,876

MA maximum - \$14,457

MA plus 30 minimum - \$ 9,320

MA plus 30 maximum - \$15,180

Education Specialist minimum - \$ 9,786

Education Specialist maximum - \$15,939

Over the years, the Board has failed to seek and obtain the necessary millage to compensate its teachers in accordance with the ability of the district. The district began to encounter financial difficulties following the 1963-64 and 1965-66 years in which it did not seek operational millage. As a result, it dropped to next to the lowest in the county in operational millage for both the 1968-69 and 1969-70 school years. For the same reason, the district encountered certain deficits, that is, greater expenditures than revenues; this resulted in a deficit of \$253,500 in the 1967-68 year. However, in both 1968-69 and 1969-70 surpluses have been shown in revenues, with the result that the general fund deficit was reduced to \$118,279 for the 1969-70 school year.

The Flint Metropolitan area has become part of the Southeastern Metropolitan Industrial Complex as established by the Bureau of the Budget. In comparing teachers salaries in this area, it is seen that this district's teachers lag behind teachers in Detroit, Oakland and Genessee Counties. The disparity is especially pronounced at the top of the bachelor and master pay scales. At that level, the teachers fall far below other districts even though this district has the second highest state equalized valuation in Genessee County.

#### POSITION OF THE BOARD

The Board proposes a minimum bachelor salary in the amount of \$7,900 with vertical increments of 4% and horizontal increments of 5%. This would result in the following minimum and maximum salaries.

BA minimum - \$ 7,900

BA maximum - \$11,244

BA plus 18 minimum - \$ 8,295

BA plus 18 maximum - \$12,279

MA minimum - \$ 8,710

MA maximum - \$13,300

MA plus 15 minimum - \$ 9,146

MA plus 15 maximum - \$13,946

MA plus 30 and Education Specialist minimum - \$ 9,603

MA plus 30 and Education Specialist maximum - \$14,620

The Association seeks to make comparison with teacher salaries in Wayne and Oakland County. Such comparisons are not valid as different economic factors exist in the other localities. When salary settlements

to date in Genessee County are compared, it is clear that the Board's position on salaries is fair and places its teachers in an excellent competitive position.

The district anticipates certain higher costs in the present school year. Based upon a decision of the Supreme Court, it is now necessary for the district to supply all text books, materials and other items necessary in any class. Special fees for supplies and equipment can no longer be required of students. It is anticipated that these charges will result in a necessary expenditure of approximately \$50,000. In addition, the charges made as tuition for special education services rendered when students are sent out of the district has almost doubled from the last year; this will result in an expenditure of approximately \$43,000 in the current school year. The district has hired 24 more teachers, and anticipates adding another remedial reading instructor and one special education instructor in the near future. Many of the teachers hired have masters degrees or are experienced and cannot, therefore, be placed at the bottom of the pay scale.

Based on the actual revenues available to the district as well as comparison with surrounding districts in Genessee County, the Board's salary offer is fair and equitable.

#### FINDINGS AND RECOMMENDATIONS

There are 5,055 students in the district and a total of 205 teachers. In 1969-70, there were 181 teachers. The state equalized



valuation for the 1970-71 year is \$109,836,808 which results in a per pupil equalized valuation of \$21,728. This is the second highest equalized valuation in Genessee County, following the Carmen District at \$27,500. In 1969-70, total operating expenses of the district were \$2,809,441 with teachers' salaries amounting to \$1,810,080, or 64.4% of total operating expenses. There were 16.28 operating mills available in the 1969-70 year and with the additional operating millage voted in June of this year, there will be 19.18 operating mills available in the 1970-71 year.

Salaries for the 2nd semester of the 1969-70 year were:

BA minimum - \$ 7,400  
BA maximum - \$10,533

BA plus 15 minimum - \$ 7,770  
BA plus 15 maximum - \$11,501

MA minimum - \$ 8,159  
MA maximum - \$12,376

MA plus 15 minimum - \$ 8,567  
MA plus 15 maximum - \$12,982

MA plus 30 and Education Specialist minimum - \$ 8,995  
MA plus 30 and Education Specialist maximum - \$13,614

A review of the past operating expenses and anticipated receipts and disbursements for 1970-71 indicates no real financial distress on the part of the Board in paying its teachers a fair and equitable salary for the present school year. The Board's desire to reduce the general fund deficit is a sincere one and it is to be commended in this respect. However, those efforts should not be attempted

at the expense of the teachers. I have also compared the salary data submitted by the Board and Association and balancing this information with the financial condition of the district, it is my belief that the following salary schedule should be adopted.

A minimum salary for the bachelor degree should be established in the amount of \$7,955 with both vertical and horizontal index factors of 5%. In regard to the vertical factor of 5%, I most definitely find that this district's teachers have fared poorly in comparison to surrounding districts at the higher levels of the salary scale. There is no need for this condition to persist and, hopefully, the 5% vertic index factor will infuse a greater degree of equity into the salary schedule at the highest levels. I believe the Board can and should pay salaries based upon these recommendations in the present school year; no recommendation on salaries is made or offered beyond the 1970-71 year.

#### FRINGE BENEFITS

##### POSITION OF THE ASSOCIATION

The Association believes it essential that certain items designated as fringe benefits be included and/or increased under the present contract.

Hospitalization and medical coverage should be increased from the Blue Cross MVF 1 package or MEA super med to the Blue Cross MVF 2 with master medical coverage, or the equivalently-increased MEA coverage.

For those teachers already covered with full hospitalization through a spouse, loss of time insurance to a maximum of 80% of salary or a \$10,000 convertible term life insurance policy should be provided.

In addition, convertible term life coverage should be increased to \$10,000 from the present coverage of \$5,000. Several new benefits have been proposed by the Association, all of which are deemed essential to the physical and economic well being of the teachers. These are:

Dental Insurance

Plan A, Dental Care Incorporated

Long Term Disability Insurance

This will provide teachers with 60% of their income after 90 days of continuous disability as specified in the Michigan Education Special Services Association Plan.

Survivors' Benefit Insurance

This will provide a monthly payment of \$100 to the surviving spouse and \$50 to unmarried dependent children under the age of 25, as specified in the MESSA Survivors Income Benefit Package.

Severance Pay

This will provide for the payment to each teacher upon retirement of a lump sum of \$100 for each year taught in this district, to be counted as part of the teacher's salary for the final year of employment.

POSITION OF THE BOARD

The area of fringe benefits cannot be divorced from the entire financial package. Teacher salaries must be considered when fringe benefits are reviewed. The Board has done this, and its last

salary offer incorporated some of these items. Based upon its ability, the Board is willing to pick up the increased Blue Cross or Super Med coverage and to provide for long term disability insurance to commence at the end of a 6 month disability. In addition, for those teachers whose hospitalization and medical insurance is carried by a spouse, the Board offers loss of time coverage in a maximum of 80% of salary or, in the alternative, \$5,000 of additional life insurance over the \$5,000 in term life granted in the prior contract and which it is again willing to offer. This constitutes the total economic package, and the Board feels it can offer no additional benefits.

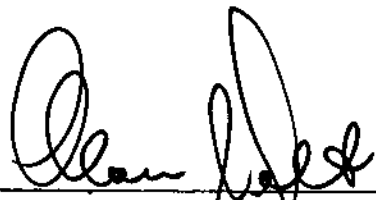
#### FINDINGS AND RECOMMENDATIONS

In reviewing the data submitted by the Association, there is no question that all of the items requested are desirable goals. Certainly, dental care is a necessity and, without question, various insurance plans are beginning to reflect this coverage. Severance pay and survivors benefit insurance need not be commented on since their value is self-evident. However, it is my finding that the Board will be somewhat limited in its consideration of these areas if it is to grant the salary which I have recommended above. For that reason, it is my recommendation that the Board provide and pay for the increased hospitalization and medical plans under the MVF 2 program of Blue Cross or the increased MEA Super Med package. I also find that long term disability insurance coverage is a vital item which should be granted at this time. However, it is my recommendation that the Board

make every effort to establish a 90 day rather than a 6 month qualification period. The briefest consideration of this point readily reveals the severity of the economic impact of total disability over a 6 month period.

In regard to dental insurance, survivors benefit insurance, severance pay and an increase in term life insurance, it is my recommendation that these items be held in abeyance and be re-considered in the contract negotiations following the next millage election.

DATED: November 9, 1970

  
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Alan Walt  
Fact Finding Hearings Officer