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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
FACT FINDING BETWEEN:

TAWAS AREA SCHOOL BOARD

CASE NO. L91 B-0432

-and-

TAWAS AREA FEDERATION OF TEACHERS

FINDINGS AND RECOMMENDATIONS

APPEARANCES:

FACT FINDER: KENNETH M. GONKO, ESQ.

FOR THE BOARD: DAVID WM. CONZELMAN
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Tawas Area School
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East Tawas, Michigan 48730

FOR THE FEDERATION: MARK H. COUSENS, ESQ.
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Tawas Area School

INTRODUCTION

Pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commissions regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. The hearing commenced at 10:00 a.m. at the MERC facilities in Lansing, Michigan on February, 27, 1992. It was concluded that same day.

PRELIMINARY COMMENTS

This Fact Finding was initiated by a Petition filed by the Federation on August 30, 1991. Prior to the filing of the

Petition, one (1) mediation session was conducted by Mediator Bill Barnsco on July 22, 1991. The parties have negotiated extensively and, but for the identified issues below, the remainder of the collective bargaining agreement has been resolved.

At the hearing, neither party presented any lay or expert witnesses. Indeed, most of the pertinent facts surrounding this dispute have been agreed upon by the parties or, at least, have not been seriously challenged. Both parties have supplied the Fact Finder with extensive documentation in the form of Exhibits and have supplemented the record with detailed Briefs that were supplied on the day of the hearing. Both parties agreed that further Post-Hearing Briefs were unnecessary.

ISSUES

The following issues were identified and placed before the Fact Finder for review and recommendation:

1. Salary.
2. Health Care Insurance.
3. Strike Penalties.
4. Class Size.
5. Student Contact/Passing Time.

BACKGROUND

The Tawas Area School District is one of four (4) districts in Iosco County. Located on Lake Huron, the District includes East Tawas, Tawas City and all or parts of seven (7) townships in this northeast Michigan community. The District is, by definition, "out

of formula" and receives little State aid. For the 1991/92 school year, the District received 94 cents out of every dollar from local property taxes.

The Tawas Area School District currently maintains a student enrollment of approximately 1,800 students. During the past decade, the Tawas geographical area has experienced significant population growth. This has resulted in an enlargement of the student base and the resulting problems with physical space, teacher-to-student ratio and other curriculum-related difficulties. Suffice it to say, the District is currently in an expansive mode.

In this regard, the Fact Finder is impressed by the following representation made by the Superintendent in his Brief:

In the past decade, Tawas has been experiencing economic and population growth with more and more people moving into the area. Normally, individuals do not necessarily move into an area where there is low wages and high unemployment. Yet, this area has seen an increase in population growth because individuals do not want to raise their families in cities. Thus, they are willing to make financial sacrifices by moving to the Tawas. This growth has caused the townships, the cities and the schools to address a variety of problems. Brief, p.1.

The growth appears to be further substantiated by a 36.9% increase in the SEV from \$142,117,122 in 1985 to \$194,513,305 in 1991. Federation Exhibit 7.

Presently, the District operates four (4) school buildings; a High School, a Junior High School, a Lower Elementary and an Upper Elementary. The Federation bargaining unit is a standard "all teaching" unit including 92 teachers, customary support staff and specialists.

ISSUE 1 - WAGES

The parties agree that the term of the contract should be three years. As will be discussed later, however, the Board has raised a question of retroactivity that is entwined with the strike penalty issue.

The Board proposes a 2.7% increase in 1991/92, a 5% increase in 1992/93 and a 5% increase in 1993/94. The Federation, on the other hand, proposes a 5.5% increase for each of the three years.

The Board argues that, while the Federation membership certainly deserve equitable wages and fringe benefits, the present economic condition of the District requires a more modest approach. Several factors are cited by the Board in support of its position.

First, the Board notes that the decade-long population growth, coupled with a deteriorating physical infra-structure, requires it to allocate more and more of its financial resources toward an improvement and/or expansion of its existing school facilities. This problem was first addressed in 1985 and has continuously been addressed since that time. The record reflects that despite a series of millage vote failures since 1985, the District voters have approved a 3.5 mill increase in August, 1987, a 17.85 mill renewal with a Headlee override in June, 1989, a 3.25 mill bond issue in September, 1989 (specifically for new facility construction) and a .5 mill renewal in June, 1990 (specifically for maintenance and repair of facilities). The Board submits that the District's voters are unlikely to approve any additional millage

for operational expenses in light of the burden they have already taken upon themselves.

Second, the District's ability to pay for increased wages (and benefits) is further compromised by the additional tax and utility obligations imposed upon the electorate by the local municipalities and townships. The Board points to a recent construction of a new sewage plant and additional improvements to the area water system as an example of these external difficulties.

Third, the Board argues that increases in such internal operational costs as utilities, books, supplies and health care insurance further limit its ability to exceed its current wage proposal.

Fourth, the Board submits that it would be financially imprudent to accede to the Federation's demand because of the possibility that local school districts will be required to assume the cost of FICA payments that, up until now, have been assumed by the State. This additional burden may occur as early as the 1992/93 school year and will require the District to assume an additional \$294,000 obligation.

Finally, the Board notes that, while members of the bargaining unit are not the highest paid teaching employees in the area, they are, nonetheless, equitably paid. In this regard, the Board notes that members of the bargaining unit have received annual increases ranging from 4% to 7% from the 1984/85 school year to the present.

The Federation, on the other hand, argues that other equally compelling factors support its position on the wage issue and that the Board is merely being confrontational.

First, the Federation notes that in 1990/91, the Board paid a total of \$2,952,288 (salaries, longevity and "other" compensation) to members of the bargaining unit. In contrast, the Board is currently paying a total of \$2,939,182 (no raise included) to members of the unit for the 1991/92 school year. This is due, in part, to the resignation of two teachers and their replacement with lower paid employees.

The Federation submits that the difference between its wage proposal and the Board's proposal amounts to \$85,508 in 1991/92, \$106,179 in 1992/93 and \$129,035 in 1993/94. In a 1991/92 budget that exceeds \$3,000,000 for all expenditures for employee compensation, these differences are fairly insignificant. The Federation calculates that, throughout the life of the contract, its salary proposal will cost the District about 4% more than what the Board has proposed.

Second, the Federation argues that its salary proposal is within the Board's ability to pay. In this regard, the Federation notes that the District is not "in formula" and hence, not subject to the swings in support from the State. Further, the Federation notes that there is a millage request pending that, if obtained, will produce an additional \$700,000 in revenue to the District even without an increase in SEV. Given the fairly significant increase in the SEV from 1985 to 1991, the Federation believes that this

trend will continue thereby bringing even more revenue into the District.

Third, the Federation submits that the Board artificially created a financial "emergency" at the end of the 1990/91 school year when it spent over \$44,000 on items not included in the year end budget. These items included \$12,000 in remodeling, \$6,210 in equipment replacement, \$5,500 on furniture and fixtures and \$17,000 on elementary school workbooks. While a total of \$6,300 was budgeted for these items, the Board spent a total of at least \$34,000 over the budget to create an artificial deficit. The Federation argues that this crisis was created in anticipation of these negotiations.

Fourth, the Federation notes that its wage proposal would merely maintain the members' status quo vis-a-vis other comparable teachers in the area. Given the comparable school districts in the area [Federation Exhibit 8(a)], the Union's proposal would raise the BA Maximum from 9th position (out of 17) to 8th and the MA Maximum from 13th to 12th. If longevity pay was added to the calculation, the Union's proposal would maintain the BA Maximum in the 8th position and the MA Maximum in the 12th position. By contrast, the Board's proposal would drop the BA Maximum to 10th, and the MA Maximum to 15th.

Finally, the Federation argues that raises of 5% to 6% are common and that its proposal is consistent with these prevailing wage increases.

The Fact Finder initially recognizes that most, if not all, of the supporting data supplied by the parties has not been challenged for accuracy, relevancy or authenticity. Accordingly, in analyzing this issue, I must assume that all of the pertinent data is admissible and worthy of detailed consideration. There are, however, some exceptions in this case which I will discuss as required.

I acknowledge that, unlike many school districts around the State, the Tawas Area School District is expanding due to the population growth that has occurred in Iosco County over the last decade. I must assume as true the Superintendent's statement that more and more people are moving to this resort area as an alternative to a big city lifestyle and that they are willing to make the financial "sacrifice" to do so. The question then becomes "How much of a 'sacrifice' can the District's residents be required to make?"

The evidence is undisputed that from June, 1985 to November, 1991, the District has conducted 16 millage elections. During that time, only one (1) vote (August, 1987) resulted in a significant millage increase (3.5 mills). Two (2) elections (June, 1985 and June, 1990) resulted in a .5 mill renewal and another election (June, 1989) resulted in a 17.85 operational mills renewal. A September, 1989 election resulted in a 3.25 mill construction bond issue. Another millage election is planned for this year.

This Fact Finder is sensitive to the issue of the increasing tax burden to the citizens of the Tawas area. Yet, I am persuaded

by the Federation's argument that, when necessary, the residents have recognized the needs of the District and have responded positively. This appears to be such a time. There is no doubt that residents of the District are being affected by the population growth occurring in the area. They have been required to support various improvements in the local government infra-structure. Few will dispute, however, that a child's education is just as important, if not more important, than an enhanced sewer system or road improvements. If, as the Superintendent noted, the residents of the Tawas are willing to make the financial sacrifices necessary to raise their families in this bucolic area, then this sacrifice should be willingly assumed, within reason, for the support of the school district. I cannot, therefore, conclude that the residents of the District will not support quality education for their children through necessary millage.

On the other hand, the members of the Federation's bargaining unit have enjoyed a fairly equitable salary package when compared to other comparable teachers in the area and when further compared to other local public and private employees. Members of this bargaining unit have consistently enjoyed salary increases of anywhere between 4% and 7% from the 1984/85 school year to date. These salary increases have been accompanied by corresponding increases in the member's fringe benefit package. While the bargaining unit member's salary does not place him or her at the top of the comparable list, it does not place them at the bottom.

The evidence shows that Federation members are firmly within the middle of the comparable grouping.

Based upon all of the foregoing, this Fact Finder is impressed and persuaded by portions of both the Board's and the Federation's arguments. Accordingly, I am convinced that a compromise of both positions is in order.

I therefore recommend that the Federation's proposed salary increase of 5.5% for the 1991/92 school year be implemented. In this regard, I am not persuaded that the District's economic condition is as severe as the Board contends. I find compelling the fact that the Board was undeniably willing to spend over \$40,000 in unbudgeted funds at the end of the 1990/91 school year knowing that it was entering into negotiations with the Federation. If the Board is as concerned about financial responsibility as it professes, then I find its year-end expenditures curiously odd.

I further recommend that the Board's proposed salary increase of 5% for the 1992/93 and 1993/94 school year be implemented. In this regard, I am persuaded by the Board's concern for future economic liabilities. While I find that the potential FICA assumption is too speculative to consider, I am concerned about the long term financial burden on the District's residents through repeated requests for more and more millage. While I am confident that the Tawas area residents will support the educational efforts of the District, I cannot expect that they will do so on a continuous, non-stop basis. While a .5% difference between the Board and Federation proposals does not appear significant,

nonetheless I believe that the Board's offer is more equitable over the course of the three year agreement given the 5.5% increase recommended by this Fact Finder for the 1991/92 school year.

ISSUE 2 - HEALTH CARE INSURANCE

Out of all the issues presented at the hearing, this health care issue appears to be the most confusing. On page 2 of it's Brief, the Federation represents that:

The parties agree that current insurance should be replaced by a package underwritten by the Michigan State AFL-CIO Public Employee Trust ("The PET"), and administered by Michigan Employee Benefit Services ("MEBS"). The package will improve upon current insurance to some extent, but will control costs better than the present package. (Emphasis added).

Yet, a review of the Board's Brief and the comments made at the hearing reveal an apparent ambiguity in the District's position in this regard. On the one hand, the Board has shown a willingness to adopt the PET Plan and recognizes that members of the bargaining unit may prefer the PET Plan to the current Blue Cross-Blue Shield Plan. However, the Board further indicates that it proposed an alternative BC-BS comprehensive major medical program that, likewise, could have saved the District approximately \$60,000 had it been accepted and implemented at the beginning of the 1991/92 school year. Since the Federation did not accept the BC-BS alternative in a "timely" manner, these savings have now been lost. The Board has not specifically indicated that it now cannot accept the PET Plan but prefers to adopt the BC-BS alternative in the event it cannot obtain a "cap" on future increases in premiums under the PET Plan.

The background facts are not disputed. The District has maintained health and dental insurance coverage for members of the bargaining unit for years. Over the past seven (7) years, however, the Board has kept a "watchful eye" on rising health care costs in the District. On page 12 of its Brief, the Board notes that in the last seven (7) years, the District has seen the following increases in its bargaining unit health care premiums:

1985/86	4%
1986/87	3%
1987/88	13%
1988/89	16%
1989/90	7%
1990/91	7%
1991/92	29%

It is the 29% increase in the last year that has caused the Board to commit itself to the implementation of a premium "cap" for health care insurance.

The Board has taken the position that, if the PET Plan is implemented, it will assume 100% of the premium cost for the 1991/92 school year. However, the Board further proposes that it will limit its liability for these premiums at 105% of the cost over the base period for the 1992/93 school year and at 110% of the cost over the base period for the 1993/94 school year. Any premium increases over these amounts will be fully assumed by the members of the bargaining unit.

As an alternative, the Board proposes that it be allowed to implement the BC-BS alternative plan although it appears that any savings obtainable by this alternative have now been lost.

The Federation, on the other hand, objects to any cap on health care premiums regardless of the plan implemented but, in particular, for the PET Plan. The introduction of a health care "cap" will further erode whatever salary increases are obtained by members of the bargaining unit to a ridiculously low amount. For example, a teacher at the maximum step, receiving a salary of \$42,521 (present salary, applying the Board's 2.7%, 5%, 5%) would be forced to absorb a co-pay of \$934.80 (the co-pay on a 15% insurance increase) and would, therefore, lose 2.2% of his or her gross pay.

The Federation also argues that the risk of any premium increase is better absorbed by the Board. The Board expects to spend \$360,000 on insurance this year including the 29% increase (approximately \$69,000). This \$69,000 increase is not significant in a total District budget of \$6,000,000.

Finally, the Federation submits that no other school district in the area maintains a cap on their insurance programs even though they maintain similar insurance coverage.

This Fact Finder is mindful of the ever-increasing cost of health care coverage in this State. It is often the largest single source of discord among employees and employers. The question is, however, whether the Board has presented a compelling enough case to warrant this admittedly radical departure.

It is the opinion of this Fact Finder that the evidence does not justify the need for a cap on health care insurance at this time. (The parties have used the word "cap" throughout these

proceedings. I interpret this to mean, in reality, an insurance co-pay system since the employees themselves will be responsible for the premiums over and above a percentage of the base period.) Until now, the Board has never apparently considered, and certainly has not proposed, such a severe departure from the status quo.

The record reflects that, but for the 29% increase in 1991/92, the District has enjoyed fairly modest premium growth. Although the 29% increase is significant, I do not believe that this alone justifies the implementation of a co-pay provision. I am persuaded by the Federation's argument that the Board's co-pay proposal could potentially eliminate any salary increases obtained by the unit members and, given repeated and significant increases, could substantially erode the wages presently maintained by these employees. This, in turn, would result in higher and higher wage demands in the years to come in order to offset the co-pay system.

Further, even the evidence introduced by the Board discloses that no other surrounding district "caps" its premium costs at 105% or 110% of the base period. Most of the caps cited apply only when the premiums exceed at least 15% of the base period.

Finally, I am also persuaded that, given the percentage of the Board's budget allocated to health care coverage, the District is in a better position to absorb the cost increases associated with these premiums. It must be remembered that, but for the 29% increase in 1991/92, premium growth in the District has been fairly modest. The Board has not presented the Fact Finder with

any projections that indicate that it will face a similar substantial increase during this contract period.

Accordingly, this Fact Finder cannot recommend the implementation of a premium "cap" as proposed by the Board.

The question now becomes what policy should be recommended. On the one hand, the Federation claims that the parties have already agreed to the PET Plan. Yet, the Board claims that the BC-BS comprehensive major medical alternative would have saved the District nearly \$60,000 had it been implemented at the beginning of the 1991/92 school year. It admits that these savings have now been lost but still desires the approval of the BC-BS alternative.

The Board has not presented any evidence that the BC-BS alternative will produce any further significant savings over the PET Plan presently proposed by the Federation. Conversely, the Federation indicates that, although the PET Plan's premiums will increase in 1992/93, the increase will be limited to approximately 10 to 15%; a rate that is less than the average annual "medical inflation" during the last five (5) years. See Federation Exhibit 14.

This Fact Finder is concerned that the Board has not presented any clear and specific evidence that the BC-BS alternative is a reasonably comparable substitute for the current health care coverage. The Federation has indicated that not only is the PET Plan acceptable to its membership as a comparable plan, it has also been accepted by the Board during negotiations. Given the evidence presented by the parties at the hearing and in their

Briefs, I must, therefore, recommend that the Federation's proposal on health care coverage be implemented.

ISSUE 3 - STRIKE PENALTIES

The Board has proposed that each member of the bargaining unit be penalized for conducting a seven (7) day work stoppage between August 29 and September 10, 1991. The Board proposes that the school year be reduced by five (5) working days and that the teachers' salaries be reduced correspondingly.

The Board correctly notes that strikes by public employees are illegal in Michigan. The Board argues that the Tawas Area teachers would obtain an unfair advantage over their private sector counterparts (who may legally strike) if they were paid their full annual salary even though they did not work an entire school year in 1991/92.

The Federation objects to any form of strike penalty. It argues that such punishment has no place in a labor relationship and that the Board-proposed penalty would only invite retribution from members of the bargaining unit. Further, the Federation submits that, in light of Lamphere Schools v. Lamphere Federation of Teachers, 400 Mich 104 (1977), the "relief" requested by the Board is beyond the jurisdiction of this Fact Finder. Finally, the Federation notes that, as a practical matter, both the teachers and the students would be hurt by the imposition of a strike penalty because to do so would require the Board to reduce the student school year as well as the teacher school year for 1991/92.

The purpose of this Fact Finding is to, hopefully, induce an amicable settlement of this labor dispute. This Fact Finder views his position as one of trust for all parties concerned. This includes not only the Board, the Federation and the members of the bargaining unit but the residents and students of the District. I have attempted throughout these proceedings to accommodate the needs of all concerned.

As the Fact Finder, I am not convinced that the imposition of a strike penalty would further anyone's interests. The Board and the Federation have maintained a reasonably harmonious relationship over the past decade despite the stress that a growing student population and a limited physical infra-structure has placed upon the parties. Any labor dispute, and certainly a work stoppage, impacts upon union/management relations. Yet, it is not the Fact Finder's place in this proceeding to consider or rule upon the philosophical differences surrounding public employee strikes in Michigan.

The Board has a remedy both under PERA and in the collective bargaining agreement if it feels that members of the bargaining unit deserve to be "penalized" for their role in the work stoppage. Article 7.15 of the collective bargaining agreement provides that the Board may discipline a member of the bargaining unit for just cause. Further, the Board has the right to petition the Michigan Employment Relations Commission, through an unfair labor practice charge, if it desires to challenge the propriety of the actions taken either by the Federation or its members in this

type of situation. However, the Board should not expect a fact finder to perform the task of the Commission or an arbitrator in this regard.

The role of a fact finder is to bring the parties together not to drive them apart. This Fact Finder is of the opinion that the imposition of a strike penalty in this case would harm the students of this District as well as the teachers since both student and teacher time would be reduced in 1991/92. Further, the penalty proposed by the Board is essentially a one week disciplinary suspension for each member of the bargaining unit regardless of the level of individual participation in the strike. Such a penalty would only encourage further bitterness between the parties at a time when the parties must, of necessity, work together toward enhancing the educational goals of this expanding District.

Based upon the foregoing, this Fact Finder recommends that no strike penalty be implemented.

The Board has also used this opportunity to demand that any settlement of the contract be given prospective effect only. In other words, the Board proposes no retroactivity. Again, the Board's rationale is that the Federation is to blame for the delays in the resolution of this dispute and that the membership should not benefit from these delays. Further, the Board argues that since it has lost the cost savings it would have realized from a timely implementation of the health care insurance alternative, any economic settlement should be prospective only.

The Federation argues that the Board cannot seriously propose no retroactivity. It claims that the Board has raised this issue at the last minute as a means to further penalize the bargaining unit for their role in the work stoppage. This, the Federation submits, is evidence of regressive bargaining by the Board.

This Fact Finder is concerned that the issue of retroactivity surfaced at the hearing. Although the Board indicated in a letter dated October 28, 1991 that the retroactivity issue was still in dispute, a subsequent telephone conference call between the Fact Finder and the parties' representatives left this Fact Finder with the impression that the issue had been dropped by the Board. Indeed, the Federation did not address the issue during its presentation or in its Brief.

Aside from the apparent surprise to the Federation, the Board is again proposing that members of the bargaining unit be "penalized" for resorting to the collective bargaining process. Neither the Board nor the Federation presented any evidence that would lead the Fact Finder to conclude that either party bargained in bad faith. Even if they had, I am not convinced that it is within my jurisdiction to rule upon and "remedy" what is essentially an unfair labor practice situation. Such matters, like the issue of illegal strike activity, are within the province of the Employment Relations Commission.

This Fact Finder is not persuaded that the issue of retroactivity has been consistently disputed. Further, it appears that the proposal has been suggested as a punitive measure only. It is

therefore my recommendation that the Board's proposal in this regard be rejected.

ISSUE 4 - STUDENT CONTACT/PASSING TIME

The facts on this issue are undisputed. During the summer of 1990, the parties met and negotiated a change in the work schedule that resulted in an increase from a six (6) to a seven (7) period instructional day. Each class period became 50 minutes in length with a four (4) minute "passing" time between the period. The students' day began at 8:10 a.m. and ended at 2:50 a.m. The teachers' day started at 7:45 a.m. and ended at 3:15 a.m.

Mid-way through the 1990/91 school years, junior and senior high school administrators began receiving complaints from students and teachers alike that the four (4) minute passing time between classes was simply not sufficient. (Previously, there had been a five minute passing time).

Around the same time, the administration also received complaints from the teaching staff that the 50 minute class period did not give them sufficient time to cover the required material with their students. (Previously, class periods ran 55 minutes in length).

As a result of these concerns, the High School principal established a committee to investigate ways to resolve the scheduling dilemma. The committee met in the spring of 1991 and discussions apparently continued until the end of that school year. It appears that members of the bargaining unit were at least consulted for their input on the subject.

Prior to the beginning of the 1991/92 school year, the committee recommended certain changes to the schedule that were implemented by the District once school resumed. For the 1991/92 school year, the student day begins at 8:10 a.m. and ends at 2:55 a.m. The teachers' day begins at 7:45 a.m. and ends at 3:15 a.m. The only difference between the 1990/91 school year and the 1991/92 school year is that the five (5) minute passing time between classes was restored.

There is no dispute that this change did not lengthen the teachers' work day nor did it otherwise affect their salary. The change did, however, shorten the teachers' preparation time from 25 minutes to 20 minutes.

The Board argues that this change was necessary due to the limitations imposed by the shortage of physical space particularly at the Junior and Senior High Schools. The Board further argues that the change was discussed with members of the bargaining unit and the restoration of the five (5) minute passing time was the only viable option available.

The Federation admits that a change was needed. However, the Union takes issue with the unilateral restoration of the five (5) minute passing time. The Federation argues, in this regard, that such unilateral action by the Board is an unfair labor practice. Further, the Federation notes that while five (5) minutes of time per day may not seem like much, over the course of the school year a total of 15 hours of paid preparation time is lost.

This Fact Finder has already acknowledged that the District is expanding in student population while its physical plant has not kept pace due to budgetary constraints. There is no doubt that the Board has attempted in the past to remedy these concerns to the extent they have been able. It is also undisputed that the Board, through its administrators, met with members of the bargaining unit and not only heard their complaints but attempted to find a reasonable solution. Finally, there is no dispute that members of the bargaining unit have not suffered monetarily by the change in passing time.

This Fact Finder recognizes that, in the eyes of the Federation, the Board's unilateral implementation of the five (5) minute passing time may have been an unfair labor practice. (I note at this juncture that there is nothing in the current collective bargaining agreement that directly regulates this issue or that otherwise prevents the Board from making the change). As this Fact Finder has stated previously, this forum is not the place to litigate real or perceived violations of PERA. It is simply beyond my jurisdiction.

This Fact Finder concludes that the Board has adopted a reasonable solution to the problems associated with the passing time issue. Accordingly, the five (5) minute passing time proposed by the Board is hereby recommended.

ISSUE 5 - CLASS SIZE

The present collective bargaining agreement between the parties provides in Section 6.9 that:

The Board and the Federation recognize that the pupil-teacher ratio in individual classrooms which exceed thirty (30) to one (1) detracts from a good educational program.... Therefore, the parties agree that the class size should not exceed thirty (30) to one (1).

It has not been suggested that this language requires the Board to limit class size to 30 pupils or less. Rather, Section 6.9 acknowledges a goal to be obtained if possible.

The parties agree that class sizes in the Elementary Schools have increased consistently since 1985 while class sizes in the High School have dropped during this same period of time. The Board notes on page 18 of its Brief that in 1985, there were 30 elementary teachers in the unit and an average class size of 23 students. Over the next seven (7) years, the Board has added seven (7) elementary teachers to the unit while the average class size has increased to 27 students per class.

The Federation initially proposed that two (2) teachers from the Junior or Senior High School be transferred to the Elementary Schools in an effort to ease the burden particularly in the 5th and 6th grades where class sizes generally range anywhere from 27 to 32 students. The Federation notes that such a transfer will not cost the District any additional monies and that it will waive any grievances it could otherwise pursue as a result.

The Board has already added one (1) elementary school position since the inception of bargaining. This occurred when a High School Counselor resigned and the person was not replaced. The only issue then is whether the Board should be required to transfer one (1) additional teacher to the Elementary School.


The Board agrees that class sizes in the District and, in particular, in the Elementary Schools have been a concern since the 1984/85 school year. However, two (2) problems have made it difficult to control class size; physical space and money. The Board notes that, when possible, modifications to the physical space have been made to add classrooms. The Board claims though that the District simply has not had the financial wherewithal to increase the teaching staff to an optimum level. Notwithstanding, out of the last 12 teaching position additions, 11 have been made at the Elementary level. The Board further argues that it will not reduce the quality of the curricular program at any school as a means to lower class size.

The Fact Finder is convinced that the Board has made a good faith effort in the past to maintain or reduce class size below the 30 student goal. Admittedly, some but not all of the 5th and 6th Grade classes exceed the 30 student goal. None, however, exceed 32 students. See Federation Exhibit 15. The Board recognizes that a problem exists and has made several attempts over the past seven (7) years to resolve the problem including the addition of one (1) of the two (2) positions sought by the Federation since the inception of bargaining.

While the addition of one (1) more Elementary position through transfer will not cost the District anything monetarily, this Fact Finder will not disturb the Board's managerial efforts to date. Accordingly, the Fact Finder recommends that the Board's position on the issue of class size be adopted.

SUMMARY

The Fact Finder has made the above recommendations after carefully considering and analyzing the evidence contained in the record. I sincerely believe that the recommendations can serve as the basis for resolving this dispute. I urge the parties to set aside any bitterness caused by the work stoppage and subsequent negotiations. I ask that you use these recommendations at least as a starting point for further, intensified negotiations. The Fact Finder will be available and will respond to any joint inquiries made by the parties.



KENNETH M. GONKO

DATED: March 26, 1992