

1689

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING

between

BOARD OF EDUCATION
THORNAPPLE KELLOGG SCHOOL DISTRICT

and

KENT COUNTY EDUCATION ASSOCIATION/MEA/NEA

REFERENCE:

MERC Case No. G83-B-277

REPORT AND RECOMMENDATIONS
OF THE FACT FINDER

The Michigan Employment Relations Commission on its own motion appointed the undersigned as its Fact Finder and Agent on September 2, 1983, to conduct a Hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's Regulations, and to issue a report with recommendations with respect to the matters in disagreement between these parties. A prehearing conference was held by the Fact Finder with the representatives for each party on September 12, 1983 in the offices of the Thornapple Kellogg School District in Middleville, Michigan. The Hearings were held from 8:30 a.m. until 4:15 p.m., including a prehearing conference initially, both on October 17, 1983, and also from 9:00 a.m. until 7:30 p.m. on October 18, 1983, in the MERC offices, 350 Ottawa, Grand Rapids, Michigan. At the conclusion of the final day, each party was given a final opportunity to confer separately and with the Fact Finder jointly in a final attempt to resolve any of the issues before they were given finally to the Fact Finder for his consideration and report. While discussions occurred that might have led to a resolution of some issues, there were contingencies required, which meant that all five issues in dispute remained with this Fact Finder for his recommendations. The parties wished to make their closing arguments orally and the Board wished to submit arbitration awards in support of its closing arguments. Having received those awards on October 21, 1983, this Fact Finder informed the parties that the record was closed on that date.

FACT FINDER AND AGENT: David T. Borland, appointed under the procedures of the Michigan Employment Relations Commission.

REPRESENTING THE PARTIES:

Board- Susan H. Zurvalec
Michigan Association of
School Boards
421 W. Kalamazoo Street
Lansing, MI 48933

Association- Larry A. Thompson
9C UniServ Division
Michigan Education Association
4020 Eastern Avenue, S.E.
Grand Rapids, MI 49508

APPEARANCES FOR THE PARTIES;

Board- Gerald Page, Superintendent- Thornapple Kellogg Schools
 John Jacobitz, Director of Marketing and Field Services- SET, Inc.
 Denise D. Campbell, Labor Relations Consultant- MASH
 Lois Seppanen, Business Manager- Thornapple Kellogg

Association- Tony L. McLain, President- Thornapple Kellogg Teachers
 Gary A. Fitch, Field Representative- MESSA
 Clifford D. Worden, MEA Staff

INTRODUCTION

The negotiations between these parties for a successor Agreement began in November, 1982, on both formal and informal bases, which continued into 1983. On August 31, 1983, the existing three year Agreement (Jx-1) between the Board of Education of Thornapple Kellogg School District and the Kent County Education Association/MEA/NEA expired. By mutual agreement the provisions of that contract were extended into the 1983-84 school year, while the issues in dispute were discussed further.

According to the parties, a bargaining session was held for two hours on August 29, 1983, in the presence of a State of Michigan Mediator. The Mediator suggested the use of fact finding proceedings to resolve the existing disputes. The parties themselves met again on September 2, 1983, but were unable to resolve the remaining issues in dispute, at which time the Michigan Employment Relations Commission initiated these fact finding proceedings on its own motion.

At the first prehearing conference with this Fact Finder the parties identified three issues at dispute and at the second prehearing conference, just prior to the first Hearing, included two additional issues about which they wanted this Fact Finder's recommendations. The issues before this Fact Finder considered to be at impasse, then, were salary, health insurance, early retirement, number of work days in the calendar, and the duration of the new Agreement. The parties stipulated that all other contractual matters either were continued from the previous

Agreement or else were resolved and that resolution of these five remaining issues would result in a mutually determined labor agreement.

The current positions of the parties will be discussed separately in detail below. Suffice it to summarize here that the Association stated that its final positions were those expressed on August 2, 1983 (Jx-2), which, when not consummated, resulted in an authorization for job action by the teachers that was held in abeyance pending the results of these Fact Finding proceedings. The Board's final positions on the issues in dispute (Jx-3) were presented in the September 2nd bargaining session, which did not lead to revision of the Association's positions, and as a result no agreement was gained. Analysis of each party's position on each of the remaining five issues will be presented below as the basis for this Fact Finder's recommendations to the parties. As requested by the parties, as a basis for interpretation of these issue recommendations, an analysis of the financial circumstances existing in the School District will precede the analysis of the issues.

FINANCIAL STATUS OF THE DISTRICT

Extensive testimony and evidence were presented to this Fact Finder in an attempt by each party to establish a base for evaluation of the economic proposals at impasse in this contractual dispute. This Fact Finder noted the credibility of both major witnesses. The principal witness for the Board was the Superintendent, whose knowledge of the complexities of the budgetary and accounting processes, as well as of the funding sources and requisite contingencies of each type of revenue source, was extensive and based on his many years of experience. The vigor of the testimony of the local Association President penetrated these complexities to examine the consequences of these varying financial procedures in the local situation.

It is this Fact Finder's opinion that here, as in other contractual dispute situations, the complexities of school finance for employees creates a tension that makes negotiations difficult. While individuals without daily contact with financial matters in a school district may be able to discuss financial matters in a routine setting, the pressures of the negotiations process with representatives presenting the good faith interests of their respective constituencies can create concerns. These concerns can accelerate into suspicions quickly whenever apparent discrepancies are perceived and often a clear communication between the parties is obstructed. It is also significant to note that this "normal" tension has been accelerated in the past few years by the extremely hazardous financial situation in Michigan, and not necessarily by a new breakdown between contesting parties in determination of employment conditions. It is clear that previous Executive Order budget cuts and payment deferrals by the Governor have created an atmosphere that adds interference in the clear communication patterns necessary for effective and consummatory negotiations to succeed, no matter the prior history of specific negotiating parties.

The Fact Finder's role in this process is to bring an external perspective to these complex financial and communication processes, so that each party and its

respective constituency can have some confidence in the good faith positions of the opposing party. Each party here has presented financial and comparability information to assist in the Fact Finder's conclusions and recommendations. In presenting these data to a fact finder neither party should expect a detailed analysis or audit of the financial data. The fact finding process is not an accounting process solely, because the negotiating atmosphere created is as controlling as are such financial data themselves, which are not that precise and which are subject to interpretation. Also, the Fact Finder himself has been engaged to facilitate the communications process as much as the financial process. As such the Superintendent has identified correctly that budgets are planning attempts, which must be administered flexibly as daily conditions occur, and the Association position specified that such budgets are a matter of differing priorities into which employees want continuing input as they are being determined.

The parties have taken opposing positions on the general status of the current financial status of the District. The Association position is that not all revenues have been included for the 1983-84 budget and that expenditures have been inflated inappropriately, both based on the history of the District's financial actions. The Board has taken the position that expenditures must be within revenues and that it must place emphasis on replacing programs and services that have been reduced in recent years, rather than to continue to increase salaries and benefits. In order to provide a base from which to make recommendations this Fact Finder has organized the summary data in a table presentation below and analyzed arguments about the points at which the parties disagree. While the parties may not agree with the Fact Finder's conclusions, they may be assured that such conclusions and recommendations appeared to him to be the reasonable positions from which an employment contract may evolve.

HISTORICAL FINANCIAL DATA

Thornapple Kellogg School District

	1979-80	1980-81	1981-82	Budgeted (Jx-12)	1982-83 Audited (Jx-8 & 10)	1983-84 June (Jx-12)	1983-84 (projected) October (Jx-11)
REVENUES: (Form B, Ax-5)							
<u>Total</u>	3,558,155	3,567,629	3,547,108	3,995,942	4,058,624	4,240,880	4,325,280
<u>Local-</u>							
<u>Total</u>	1,547,505	1,828,673	2,075,976	2,604,687	2,700,983	2,784,871	2,689,747
<u>Property Tax</u>	1,452,970	1,700,105	1,948,546	2,555,187	2,555,518	2,739,871	2,644,747
<u>Other</u>	94,535	128,568	127,430	49,500	145,465	45,000	45,000
<u>*State Sources</u>	1,828,580	1,594,897	1,358,244	1,391,255	1,235,764	1,456,009	1,635,533 (B) 1,595,533 (A)

**EXPENDITURES:

<u>Budgeted</u>	3,382,861	3,695,788	3,612,310	4,057,024	4,062,500	4,351,627	4,404,555
<u>Actual</u>	3,558,155	3,731,092	3,597,489	3,981,341	3,953,880	-----	-----

FUND EQUITY (Form B, Bx-28)

	414,391	250,928	200,547	-----	256,719	218,743	177,444
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* Categories of state sources not consistent from year-to-year— illustrative of general trend only

** 1979-82 (Bx-27) includes federal programs and capital outlay; 1982-84 includes operating expenses only

Revenues

Recent history in this District indicates that total revenues have increased primarily due to an increase in local revenues from 43 percent in 1979-80 to 66 percent in 1982-83, while the State share of revenues has dropped from over 51 percent in 1979-80 to 30 percent in 1982-83 (Ax-5). The figures presented by the Board were very close to the Association's figures (Local-43% - 68%; State-53% - 30%, Bx-17). Given the recent problems in State finances, this move might have been expected, even though its extent may be extreme when viewed through local eyes. Also, the local scene is enlightened where the District ranks in the middle of districts in SEV/pupil and millage levels (Bx-13), but in the lower one-third in ranking of per pupil revenue in the Kent County in-formula districts (Bx-10). Meanwhile, the local citizens have consistently passed renewal millage levels (ten times in the last eleven years), but rejected additional mills consistently (six times in a six year period), until August 3, 1982, when on the second attempt that Summer, it passed four additional mills (Bx-18). The projected increases for 1983-84 reflect an apparent return to a larger State share of total revenues.

Several questions were raised by the Association about the projections for local revenues for the 1983-84 school year budget. There was a decrease of approximately \$95,000 in the local revenues projected from the June spending budget to the October revised budget, which is the same amount of the decline projected for the property tax during that same period. This was explained as a downward revision because the State Equalized Value did not rise as much as originally projected, but that the property tax revenue actually was still higher than the previous year's audited level by approximately \$89,000. There was no evidence or testimony presented here by either party to substantiate or to challenge the SEV projections, other than the 1982-83 budgeted level, which was within a few hundred dollars of the audited figure. The total local revenue, however, is projected at a lower level by approximately \$11,000 for 1983-84 than was audited for 1982-83.

The projected \$95,000 difference, then, was explained primarily by a reduction of that amount in "other local revenue" for 1983-84, among which included the nonrecurring income of \$41,000 in delinquent taxes and interest from the Department of Natural Resources, \$22,000 in funds to repair a building roof, \$24,000 in reimbursement for insurance against unemployment losses, and asundry revenues from such areas as funds to replace a lost projector and dividends from the SET medical insurance plan. While those expenses explain the one year drop projected in "other local revenue" for 1982-83, it does not attack the fairly stable average of \$100,000 in "other local revenue" flowing each previous year (Ax-5).

While the years back to 1979-80 were presented at this Hearing, even though details of those revenues were not presented, the pattern of a recurring total flow of approximately \$100,000 has been generated, even if the details on sources may vary and contain nonrecurring items. Even though the Board, and certainly this Fact Finder, cannot predict where all of those revenues might be generated or the levels of such income specifically, there are some sources known at this time, which include at least some levels of delinquent taxes and interest, reimbursement of special education funds from restricted funds and the Kent Intermediate School District at an approximate level of 19%, potential additional dividends from the SET insurance program, and nonrecurring interest income on at least declining portions of the remaining \$350,000 of the energy loan at an eight to nine percent (8-9%) rate.

The Association also challenged the level in federal revenues expected when the District has projected a decrease from the \$72,000 level in the 1982-83 audit (Bx-8) to a \$35,000 level in the October, 1983 revised budget. Essentially, Title I funds projection were changed very little and represented the \$35,000 budgeted; Title IV B funds were a nonrecurring carryover from an expired program; other funds were restricted for equipment, special education, and professional development. It was explained that some of the restricted special education funds would flow to

the District, apparently through the State or Intermediate districts, as other "Income" as described immediately above.

Expenditures

The record of budgeted and actual expenditures historically indicates a close proximity of the two figures (Bx-27). Care must be taken in viewing those figures, which include capital outlay and federal restricted funds, and the total operating figures in other budgets presented here. Several questions by the Association about expenditures projected for 1983-84 involved the areas of operations and maintenance and special services. The Association challenged the increase in the operations and maintenance budget from \$574,000 in 1982-83 to \$605,000 in 1983-84, especially when the actual expenses for 1982-83 were only \$483,000. The major areas of concerns were custodial salaries, utilities, and energy conservation expenses.

First, while the budget amount of \$162,000 for custodial salaries was unchanged for 1983-84, it was \$20,000 higher than expended. This was due to paying less salary because leave accruals had been exhausted for some of the custodians who needed leave, and that budgeted salary for summer work was unused because 19 Youth Corps workers from the Governor's program were utilized at no cost.

Second, the fuel and electric use declined by six percent (6%) for 1982-83, due to a mild winter, but anticipated increases in Consumers Power rates from 13-20% have been projected by the utility company. While the Board has decreased its estimated utility costs by \$15,000, the Association argued that this revised increase over actual expenditures of 25% for gas and 36% for electric use still was excessive. The Board's revised position indicated that it added to the 1982-83 utilization figures the six percent lower utilization rate plus the 13-20% expected rate increases. This would explain the gas rate, but even at the maximum would seem to put the electric estimate higher than necessary.

These rates, however, tie into a third concern of energy conservation. Here the Association indicated that the \$405,000 energy loan was to create energy savings; thereby reducing costs for utilities. The bulk of energy savings work on the facilities has not yet been accomplished with only \$55,000 having been expended to date, so that savings that will occur likely will be realized in years following the 1983-84 school year. Some of those savings, however, probably should be realized during the term of the recommended contract here. Parenthetically, an increase from \$25,000 estimated payment, while the energy loan was being considered, was agreed at the \$67,000 actual payment level, when the terms of the loan actually were consummated. Also, the Board revealed that the projected increase from \$34,000 in expenditures for Building and Grounds to \$50,000 was to assist in payment of the remaining bills on roof repair.

While the meteorological and political considerations necessary to be entirely accurate in predicting the continuation of the Youth Corps, the health and personal leave statuses of custodians, the vagaries of public utility rates, and the unpredictability of Michigan winters probably is nonexistent anywhere, the continued depleted levels of leave accruals of custodians and the Board's own utility rate figures would seem to indicate some overestimation of expenditures in this area, but certainly not to the level first anticipated by the Association.

The second area of concern for the Association was in Special Services. While the increase in teachers' salaries by \$40,000 can be understood in part by the Association, it had based its \$30,000 estimate on a full time teacher and a part time psychologist. The Board indicated that a half time social worker also would be utilized. Additional expenses for supplies, support services, and a teacher aide also would increase the entire Special Services budget from \$185,000 actually spent in 1982-83 to \$263,000 projected. This also would include increases in Centers tuition and utilization by Thornapple students, more occupational/physical therapy, and more homebound students already during 1983-84 to increase the Special Services

line and the Tuition line under the Special Services budget area from actual expenditures of \$53,000 in 1982-83 to \$90,000 projected for 1983-84.

A confounding factor was raised by the Association concerning the savings (reimbursement) to be realized by moving these special educational services back to Thornapple Kellogg from Lowell. While the Association argued that tuition should be flowing back to the District from others, it also argued that savings in the program should occur as a result. The Board indicated that some transportation expense savings would be generated but that the State transportation reimbursement, as well as savings on operation and maintenance of buses, would be difficult to anticipate or project reliably, except within the \$15,000 range. With regard to reimbursement of tuition or other special education services, while the reimbursement system there was better than it had been, several delays of months or even a year or more in actually receiving the funds would be felt. Clearly, however, it seems this delayed revenue will be generated, but was not included in the 1983-84 budget; however, this same system of delays in receipt of revenue also would seem to result in a delay of expenditures for services provided by other districts for Thornapple students. In summary, the impact of the ebb and flow of funds for mutually provided special education services on yearly budgets may vary, but the comprehensive impact for the duration of future employment contracts on the fund equity in the District would be an increase.

Fund Equity

In viewing both expenditures and revenues, the concern of all involved would seem to be served best by keeping the District separate from a deficit situation. The summary of the fund equity in the table above indicates that this District is not in a deficit situation, nor has it been for the years presented to this Fact Finder for consideration here. The summary indicates, however, that there have been specific years when the District has spent more than it has generated, resulting in the trend for a declining fund equity balance. The ten percent level,

often quoted as desirable for the proportion of budget to be attained in a fund equity, has not existed in the District for a few years now, nor does it exist in many school districts recently where it once did. The Association's position that the \$405,000 energy loan could be added to the District's revenue total, which would push the fund equity to more than 10 percent, is an inviting argument at first glance. This Fact Finder has indicated that revenue produced by those funds should be considered as revenue, since the payment and interest is included as expenditure. An addition of this loan amount to the fund equity balance, notwithstanding the accounting propriety of such an inclusion as noted by the auditor, would produce an artificial expectation by employees. Their expectation that these funds would be available for employee priority input, would be misplaced, when, in fact, the priorities for those funds were established in order for the funds to be obtained initially.

The crucial question for these parties is whether this declining trend in fund equity (Bx-28) should be reversed at this time. The opinion of this Fact Finder is that no matter how desirable the ten percent level might be, the recency of the apparent recovery in Michigan is too tenuous to attempt an aggressive move toward that goal at this time. At the same time, neither can this Fact Finder justify recommendations that would lead to any significant depletion of the relative status of the 1983-84 fund equity compared to recent years.

Given that position, however, the question of priorities in how the available funds are to be utilized still must be answered. Notwithstanding the unpredictable and undetectable contingencies in some of the budget situations in the extremely complex world of school finance, it is this Fact Finder's opinion that some expenditures have been estimated higher than warranted and some revenues have not been estimated fully in the October, 1983 budget; therefore, the Board's projected deficit for 1983-84 of \$79,275 is not an appropriate estimate. It is significant to note, however, that estimation of some of these amounts is contingent on such

extremely tenuous factors as Michigan's winter. In such conditions it is clear that this District has taken the conservative approach to its estimates, which can be neither faulted, nor determined to be purposely misleading to its employees. These levels of projected revenues, savings, and expenditures, however, must be considered by this Fact Finder, as he attempts to provide a just base for resolution of the individual issues before him, but must be assessed within the general parameters he has concluded hereinabove for the financial status of the Thornapple Kellogg School District.

Comparability

In viewing these issues separately, each party has presented different bases for assessing the District's comparative status in providing employee benefits. The Association has taken the position that the District should be compared to all Kent County school districts. This was justified by the Association because of (1) the District's close proximity to Kent County, (2) its overlapping boundaries with Kent County, (3) its relationship to the Kent Intermediate School District for many related educational services, (4) its consideration of health insurance rates with Kent County districts, and (5) its focus for the employment and service area utilized by many of the District's citizens. The District has proposed (1) the use of Barry County, as the resident county for the District's constituents and the place where the vast majority of the District's property is located, (2) districts in contiguous counties, (3) districts in the same athletic conference, (4) Kent County districts that are "in-formula," and (5) industries in Middleville, as the appropriate yardsticks for assessment of the District's situation.

As might be expected the use of these differing bases presented a more favorable view of existing conditions for the party that used the specific rationale summarized above. While each of these positions was presented well from a valid conceptual base, this Fact Finder believes for the following reasons that the most appropriate

base for comparison to the Thornapple Kellogg School District would be the Kent County, in-formula, organized school districts.

First, the various relationships to Kent County, especially in school matters, must prevail in assessing Thornapple Kellogg's school situation. While that County provides much of the service affiliations with the District, the Board's own moves to have MESSA change the District's insurance categorization to Kent County, even though not in effect at this time, and the Board's own proposed insurance carrier (SET) already having placed the District in the Kent County rate category, it would be inappropriate in assessing the District's financial situation and proposed benefits to use the other geographical bases proposed by the Board.

Second, the use of all school districts in Kent County, as proposed by the Association, also would be inappropriate. The financial situations of school districts vary greatly, but one common denominator used is whether or not a specific district's financial status qualifies it for the State's formula to receive appropriate State aid. Those districts which are in-formula would face more similar financial circumstances, and therefore, would provide a more reasonable comparative base.

Third, there are some public employee groups that are organized and operate under the law and procedures for collective bargaining. These employee groups have chosen to pursue their priorities in that manner and the conditions they face with their employing school districts are more similar in considering employment conditions and benefits than with school districts, which do not have formalized employment relations with their various employee groups. In consideration here, then, the specific employee group's desires to pursue employee benefits under the law must be recognized as a relevant comparative base with school districts that also have organized groups of these same types of employees.

ISSUES

Given the financial status of the District currently, the comprehensive and total positions of the parties must be clarified before the details of each issue and its comparative base and data are addressed.

Board

The fund equity position of the District at the end of 1983-84 has been estimated by the Board to be \$177,444. The Board has estimated that while the costs for its own proposals for teachers have been included in that total, including the additional costs in extra duty pay, retirement, long term disability, and worker's compensation, its additional recent proposals on early retirement and a \$200-on-maximum salary proposal would add additional costs totalling \$23,500; thereby reducing its fund balance estimate to \$153,944 (Bx-32). In addition, the Board has estimated that all of these increases for teachers would result in an increase in wages for other employee groups totalling \$26,474, which presumably would reduce the fund equity to the \$127,470 level.

The Board also indicated that the total costs of the Association's proposals would be \$185,896, which would put the District into a deficit fund balance of \$8,452. When adding \$51,000 in additional costs for increases in wages to other groups, based on the Association's proposals, a total deficit of \$59,452 in fund equity would result.

While this Fact Finder has concluded from his findings hereinabove that he would not recommend conditions that would attempt to place the District into a deficit position, he must question the general position by the Board for several specific reasons. First, the total fund equity projected, which included a deficit just for the 1983-84 school year of \$79,275 (Bx-28), is not considered here as an appropriate estimate of expenditures and revenues for this year as concluded

hereinabove. Also, the Board estimates of the Association's position represents the bargaining position of the Association and not a difference between the parties, which is a vital factor for this Fact Finder in facilitating agreement within contractual negotiations.

Third, while this worst case presentation of the Association's position understandably must be presented by the Board within this Fact Finding context, its continuation into effects on the wages of employees outside of this bargaining unit invites the Fact Finder to exert influence beyond his authority. While this Fact Finder has experience enough to understand the pressures that exist on an employer to extend benefits afforded for one group to other employees, he also has enough experience to analyze this position as one that attempts to shift responsibility for such a decision to the organized employee group or to a fact finder. While this Fact Finder must be concerned about the impact of his recommendations on the District's total position, he has no more authority to consider the Board's potential concessions to other employees than he has to order or recommend such concessions here to all of those employees.

If this Fact Finder were allowed to so intrude and recommend as requested, and then, these employees benefitted from the negotiations' efforts of the Kent County Education Association here, would he also be allowed to recommend or order that these other employees either should be included in the bargaining unit, or pay an agency fee to the KCEA for services rendered in raising their wages? If this Fact Finder did so recommend, not only should his actions be overruled by the Courts or by MERC, but could be ignored by the Thornapple Kellogg Board appropriately. The Board must retain authority with its other employee groups here and with that authority also must retain the sole responsibility for whatever positions it takes with those employees, notwithstanding any authorized recommendations made here for its teachers by this Fact Finder.

Finally, it was inherent in the Superintendent's testimony and the Board's position that because the teacher's had received "such a large salary increase in 1982-83 beyond that of other districts in the area," somehow an adjustment or consideration should be made or factored into the wages and benefits recommendations forwarded by this Fact Finder. The ebb and flow of previous negotiations cannot be disturbed in part, primarily because any such intrusion could not comprehend fully the quid pro quo transactions needed to come to that Agreement. Neither party should be allowed to invoke such intrusion to compensate for what it could not obtain in a mutual agreement or could not gain in attempting to engage in renegotiation. This Fact Finder certainly will not be the agent for such intrusion here.

The previous contract is a matter which is closed and its terms are those for which the Board had a mutual responsibility. This Fact Finder has a responsibility to the future contract between these parties and not to "adjusting" for a perceived inequity, especially when the Board itself was a party to that "inequity." If the position were to be inverted and last year's increases were, for example, at the two percent level and the inflation rate was at twelve percent, would the Board still be requesting now that this Fact Finder interfere with the negotiated rate, by "adjusting" the next year's salary and benefits levels accordingly? The Association, then, might be justified in requesting such an "adjustment," but this Fact Finder would be no more prone to grant its request in the example, than he is to grant the Board's argument now. To the extent that such terms of a previous contract are included within the general comparability factors or trends, however, they will be considered as a part of the comprehensive negotiating history between these parties, used here to assess the respective positions presented.

Association

The Association's position was that its salary increases totalled \$127,000 from the levels budgeted for the 1982-83 school year. This included \$24,000 for increases in Steps for the one year additional experience and an additional \$3,437

for the longevity steps. On crossexamination it was admitted by the Association that the total increase did not include amounts for increases in extra duty pay, long term disability, worker's compensation, or retirement costs. The Association believes that the impact of the salary increases it proposed would reduce the fund equity from its estimated seven percent (7%) for 1982-83 to six percent (6%) in 1983-84. The Association proposals for medical insurance and early retirement represented in its view little, if any, increase and actually could represent a decline in current costs.

While, again, this Fact Finder understands the requests presented involve negotiating positions, the \$127,000 salary figure claimed by the Association is not considered here to be accurate, when the direct related costs in other financial obligations (worker's compensation, retirement, extra duty pay, and LTD) that would have to be assumed by the Board are not included. This Fact Finder cannot accept as reasonable such a request that represents 70-75 percent of that fund equity claimed by the Board to be accurate (\$177,444). The costs of the total Association demands place that proportion even higher. While the Fact Finder has concluded herein that the fund equity should have been estimated at a higher level, it must be remembered that not all of the fund equity rests in readily or even desirably liquid assets. Assuming arguendo that the fund equity estimate should be doubled, the requests of the Association would amount generally to about 40 percent of that new amount. When general concerns about other employees' needs, restoration of deleted programs and services, and the removal of such assets as buses from the fund equity balance all are considered, the costs for teachers' proposed benefits rises to well above half of the fund equity level assumed here for argument. This Fact Finder cannot in any sense endorse such elements as reasonable.

In summary, both sides understandably have accentuated the extremes here. When a group of employees sees significant changes in revenue and expenditure projections with no apparent basis in fact and when a Board and its administration

see requests from teachers in the neighborhood of 75 percent of the fund equity they project within a recent trend of declining fund balances, it is not surprising to this Fact Finder that impasse has resulted. While the behavior of both parties during these Fact Finding proceedings has been extremely vigorous and competent, that behavior has been exhibited without the debilitating rancor often found in such disputes. It seems that the role needed for this situation, then, is to bring reason to an accommodation of those negotiating extremes between these parties now before any long term negative effects are created in this essentially effective employment relationship. To that end the following specific recommendations are provided.

DURATION OF AGREEMENT

Positions of the Parties-

The positions of the parties on the duration of the Agreement had been presented to this Fact Finder as two years forwarded by the Association and four years forwarded by the Board. Each party tempered its economic positions based on that length of the Agreement; therefore, the length of the proposed Agreement needed to be addressed here initially to lay the proper foundation to comprehend the impact of the remaining recommendations.

Opinion and Recommendation-

It became clear to this Fact Finder and also to the parties that if the economic factors were considered, a three year contract, as has been practice here, should be the basis for the next adopted and ratified Agreement. Since agreement on this point seemed to exist between the parties and since this Fact Finder agreed to consider the length of the Agreement in his recommendations on the other issues, it is recommended that the parties enter into a three year Agreement, which is effective on September 1, 1983, and which expires on August 31, 1986.

SALARYPositions of the Parties-

The parties proposed widely differing levels for salaries in the successor Agreement. A summary of the last three year proposals before this Fact Finder is compared below.

	<u>Association</u>	<u>Board</u>
<u>1983-84</u>	Increase the 1982-83 salary schedule at each step by 5.25%; increase the existing Master's level schedule by \$300.	Retain the 1982-83 salary schedule and advance each teacher within existing increments for experience and credit for advanced studies; add a Step 12 to all schedules at a level of \$200; defer all such increases until July 15, 1984.
<u>1984-85</u> & <u>1985-86</u>	Increase the new 1983-84 salary schedule by a minimum of 5.5% and a maximum of 7.0%, based on the CPI (June to June).	A minimum increase of 3%; for each 1% of COLA over 3%, $\frac{1}{2}\%$ would be added; a maximum adjustment would be limited to 10% or 80% of the total percentage of per pupil increase in State aid, whichever is lower.

Opinion and Recommendation-

The Board has argued that until last year the District's teachers have ranked from seventh (7th) to eleventh (11th) place in the salary rankings at the various schedules' levels among the 12 in-formula Kent County districts (Bx-9a & b), and that its own salary proposal for 1983-84 would continue the teachers from the seventh (7th) thorough the ninth (9th) ranks (Bx-9c). The Board believes that the Association's proposals would move the teachers from the second (2nd) through the fourth (4th) ranks for 1983-84 among these same area districts, which is even higher than the fourth (4th) through the sixth (6th) ranks Thornapple Kellogg teachers had in 1982-83. Also, these 1982-83 rankings are much higher than "normal" considering the past five years totally. The Board argues, therefore, that given current conditions and a heavily taxed community, that this is not the time to implement the Association's proposals to keep the teachers at these higher rankings.

The Association's evidence seems to indicate agreement that the 1982-83

rankings coincide with the Board's figures (Ax-2), except that at the Master's + 30 level, the longevity steps are ranked about last. That same Exhibit also reveals that all Master's schedules did move up a number of ranks in 1982-83 to the middle of the in-formula districts with the eight percent (8%) increase. The Association's further Exhibits for 1983-84 (Ax-3) and 1984-85 (Ax-4) indicate that the pattern for these same in-formula districts ranges from four to six percent increases each year, which surrounds the Association's 5.25 percent level, but does not support its arguments extending that level by a CPI figure or to the maximum of seven percent increases in the last two years of the Agreement.

Considering these conflicting patterns and arguments, and no support, argument, or evidence for a Step 12 addition, a delayed payment any longer than already has existed during this interim period, or an increase based on a percentage of per pupil increase in State aid, the following recommendations seem to this Fact Finder to provide a basis for agreement between these parties.

- | | |
|---------------------------------------|--|
| <u>1983-84</u> | Increase each Step on the 1982-83 salary schedule by three percent (3%); Increase the two longevity steps on the M.A. + 30 schedule by an additional \$300; Each employee should progress to his/her appropriate experience and educational Step. These increases should be calculated from the beginning of the school year and are to be paid out equally over the remainder of the school year. |
| <u>1984-85</u>
&
<u>1985-86</u> | Increase the previous year's salary schedule by a minimum of four percent (4%). For each one percent (1%) over the minimum, one-half percent ($\frac{1}{2}\%$) will be added to the minimum percent increase to the maximum of eight percent (8%), based on the CPI-U (1967) from June to June. |

MEDICAL INSURANCE

Positions of the Parties-

The Board has proposed several changes in the current medical insurance program, while the Association position is that the Board should remit 100 percent of the existing premiums, rather than the 98 percent it remits currently. The Board has proposed to change carriers to SET, Inc. and to provide a program, which it believes is comparable to the current MESSA Super Med I plan (Bx-36, 39, & 40) and which has been determined by Arbitrator Kanner (Dexter

Education Association and Dexter School District Board of Education, AAA 54 39 0045 76, February 3, 1967) and Arbitrator Bychinsky (Jackson County Education Association and Jackson City Intermediate School District, AAA 54 39 0877 81, December 21, 1981) to be comparable to that plan. The Board is concerned, further, with the rising health insurance costs and sees the various SET plans as options to reduce costs substantially (Bx-33, 34, 41, & 42).

While substantiating the lower costs of the alternative programs (Ax-10 & 11), the Association opposes the move to the SET programs because it believes the programs are not comparable (Ax-12). The Association also believes that even with the MESSA program, its members are the only ones forced to pay a portion of their basic medical insurance plans in the Kent County in-formula districts (Ax-9).

Opinion and Recommendation-

While the Board has presented a substantial case for comparability of the MESSA Super Med I plan and the SET Ultra Med B plan, the two plans cannot be said to be entirely comparable. The SET representative indicated correctly that each plan provides substantial medical coverage, but that certain options are purposely different to affect a savings in costs. Also, while the Arbitrators cited concluded substantial comparability, Arbitrator Kanner noted that the plans were not, and need not be, identical and Arbitrator Bychinsky provided that a demonstrated denial of a benefit in shifting from MESSA/Delta Dental plan to SET would be upheld. The Association's argument on provision of 100 percent of insurance premiums by school districts was substantially correct and although several provided caps on their contributions to those programs, the caps were for the most part on the Super Med II plans.

What has become clear to this Fact Finder was that: (1) the Association has made a substantial case for 100 percent payment of its members' medical insurance; (2) the Board has made a substantial case for needing a cost containment plan, and that the SET rates were lower than the MESSA rates; (3) the SET Ultra Med 500

plan (Bx-38) did not have the comparative features to the MESSA Super Med I plan (Jx-13), as did the SET Ultra Med B plan (Bx-35); and (4) the choice of options in the substantially comparable plans should be made by the employees themselves, relevant to their personal situations. Considering all of these factors, it is recommended here that for the duration of the remainder of this Agreement, upon proper application and notification of change in status in accordance with the carrier's specifications by the employee that:

- 1) employees be offered the option of the MESSA Super Med I plan or the SET Ultra Med B plan. Further, any additional plans/carriers that the parties mutually agree are comparable also may be offered to employees as options during the life of this Agreement.
- 2) the Board will provide 100 percent of the full family health care protection for a twelve month period of the comparable plan with the lowest premium.
- 3) for any teacher, who chooses one of the plans other than the plan with the lowest premium, the Board will provide fifty percent (50%) of the difference in premium, between that choice and the plan with the lowest premium, in addition to the basic coverage.
- 4) since the parties presented no dispute on the coverage for those who did not participate in medical insurance programs, the only change would be to adjust the language to allow for the lowest comparable plan premium equivalent to be applied toward the options available.

EARLY RETIREMENT INCENTIVE

Positions of the Parties-

The Association proposed an Early Retirement Incentive (ERI) provision to Article XI, Terminal Leave, of the expired Agreement, based on a minimum age of 55, a decending percentage of the last year's salary as the age at retirement increased (25% - 15% or \$2,000 if 61 or older), health insurance benefits if a total of 30 years of service was rendered, and a limit to the first five (5) teachers per year applying for and exercising the ERI option (Jx-2). The Association provided similar plans by other Kent County districts (Ax-15 & 16).

The Board proposed an ERI plan (Jx-7) based on a letter of resignation before September 1st of the school year of retirement, a limitation to those who were

eligible for retirement under the Michigan Public School Employees Retirement System, and increasing stipends (\$1500 - \$3500) in five year steps (10 - 30 years) in service with the Thornapple Kellogg School District.

Opinion and Recommendation-

The dispute on this issue was centered on details and not on the mutual benefit to all concerned. Here the teacher who wished to retire early may do so with dignity and recognition, new individuals would have employment opportunities in the District, and there would be cost savings to the District over the life of the Agreement and beyond. The Board raised legitimate concerns about potential violation of the Age Discrimination in Employment Act, and presented a summary of an EEOC directive on June 2, 1983 (Bx-43), as a guideline. The conclusions there indicate that any ERI program, based on age and which is not a part of a bona fide retirement plan, and which "penalizes" employees who work beyond the point at which "the greatest retirement incentive is provided," likely would be in violation of the ADEA. The Board, further, cited AGO 5314, which indicated that school boards may not be involved in supplemental retirement benefits, and also the Michigan Court of Appeals in the Rochester Community Schools case (No. 54868, December 1, 1981) which is on appeal currently to the Michigan Supreme Court.

While contractual provisions always are subject to law, which is indeterminate at this time on this issue, and while the parties disagree here only as to the details of such a program, this Fact Finder recommends that the Board's proposal (Jx-7) to provide increasing incentives be adopted with the revisions in amounts and language indicated below. Since eligibility for the M.P.S.E.R.S. would be required, which provides for insurance, the Association's proposal for health insurance would be duplicative. While total experience as a teacher might be a benefit for all concerned eventually, this initial effort at an ERI program is recommended to be limited to service with Thornapple Kellogg Schools only, which would involve potentially six current Thornapple Kellogg teachers over the life

of the Agreement for the next three years. While the notification date as stated in the Board's proposal is not precisely clear to this Fact Finder, it is recommended that a minimum of three months notice during the retiring teacher's last year of employment be included. While the Association's proposal could have provided for as much as approximately a \$7,000 stipend, this Fact Finder believes that the following scale would be an appropriate expression of both parties' intent.

10 years with the District	\$1,250.00
15 " " " "	1,750.00
20 " " " "	2,500.00
25 " " " "	3,500.00
30 " " " "	5,000.00

CALENDAR

Positions of the Parties-

The Association proposed that the day prior to the opening of school (meeting and planning day) should be eliminated in favor of an inservice day during the school year, which would leave the total days for the calendar unchanged at 183 work days and 181 student days. During the opening of school in September, 1983, the teachers did not report on the planning and meeting day and voted later to not participate in the October 20th planned inservice day. In the meantime the Board proposed an additional inservice day for December 7th (Jx-4), raising the Calendar days to 184 for teachers and 182 for students.

Opinion and Recommendation-

This final issue in this dispute is one that perplexes the Fact Finder. From these various actions there has resulted great confusion and some difficult emotions, which in this Fact Finder's opinion, is creating impasse where none should exist legitimately. It is this Fact Finder's opinion, further, that these parties should put this Fall's events on this issue behind them and concentrate on the future. Since the teachers did not work on the planning and meeting day and since the Board's position that total student days not be reduced does not explain the move from 181 proposed student days, the following

elements are recommended as a basis for resolution on this issue.

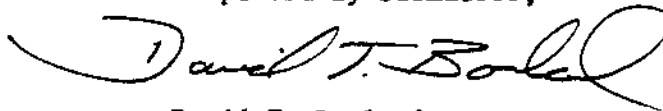
- 1) The calendar for each year in this Agreement should continue at 181 student days and 183 teacher work days.
- 2) The traditional planning and meeting teacher work day should be replaced with a scheduled inservice day each year.
- 3) An inservice day should be scheduled during the 1983-84 school year to compensate for the omitted planning and meeting teacher work day.

CONCLUDING STATEMENT

In reaching the conclusions contained in this Report, this Fact Finder has considered all testimony, evidence, and argument, even though each item was not cited in every issue discussed. The Recommendations in total were intended by this Fact Finder to provide the base from which final resolution would result. The Recommendations on the duration of the Agreement and Calendar substantially continue the practice of the parties, except that the mutally expressed desire to renew formal inservice activities has been initiated. The provisions recommended on medical insurance and early retirement incentive program options provide measures that respect the individual needs of employees and at the same time provide cost containment and potential reduction in costs within the life of the new Agreement. The salary adjustments provide a reasonable assessment of area in-formula districts, as well as the relative fund equity of the District for the past few difficult years in Michigan, while at the same time laying the base for the legitimate need for the District to build its fund balance within the near future. While each Recommendation could be attacked by the parties separately, as a package, they represent an external and impartial assessment of the elements considered necessary for these parties to exchange their seats at the bargaining table for seats at their respective desks.

It became substantially evident to this Fact Finder that the time had arrived for this exchange of seat locations to enable activities more directly related to the educational activities of the Thornapple Schhol District, than the extensive negotiations, mediation, and fact finding processes engaged in here this year. While teachers must continue to recognize the financial expertise and operations of the administrative and elected officials of the District and the District must continue to recognize the good faith needs of the teachers to be aware of the factors contained in their working conditions, it also is incumbent on the citizens of the District and their elected Board of Education to recognize that employment pressures are created in the schools financially, just as such personal pressures are considered by them at the ballot box, when they vote on school millage requests. Apparently, the local citizens recognized this pressure, when they approved recently an additional millage level for the first time in the past decade. The time for tension among the teachers, administration, Board members, and citizens has to conclude now, so that the best educational services possible in these mutually difficult times and circumstances can be provided to that other groups of citizens— the students of Thornapple Kellogg School District. It is in that belief and hope, as this Fact Finder has become more closely acquainted with the mutual needs of the competent people engaged in the activities of the Thornapple Kellogg Schools, with which these Recommendations have been formulated.

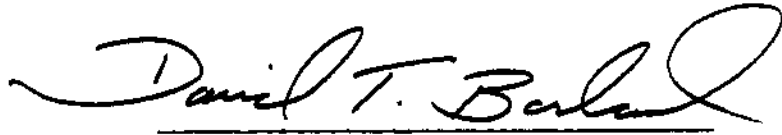
Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David T. Borland". The signature is fluid and cursive, with a large, sweeping initial "D" and a long, horizontal flourish extending to the right.

David T. Borland
Fact Finder & Agent
Haslett, Michigan
November 5, 1983

CERTIFICATION

I, DAVID T. BORLAND, having been appointed by the Michigan Employment Relations Commission as its Fact Finder and Agent, pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's Regulations, having sworn to my impartiality, and having weighed and considered all of the testimony, evidence, and argument presented, and in view of the preceding opinion and discussion, have recommended to the Board of Education of the Thornapple Kellogg School District and to the Kent County Education Association/MEA/NEA provisions concerning duration of the Agreement, salary, health insurance, early retirement, and number of work days in the school year, as contained hereinabove.



David T. Borland
Haslett, Michigan
November 5, 1983

STATE OF MICHIGAN

COUNTY OF INGHAM

On this 5th day of November, 1983, before me personally came and appeared DAVID T. BORLAND to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

