

1691

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding  
between

Traverse Bay Area Intermediate  
School District Board of  
Education

and

Michigan Employment Relations  
Commission

Traverse Bay Area Intermediate  
School District Teacher Aides,  
Chapter of Local No. 1079,  
affiliated with Michigan Council  
No. 25 AFSCME, AFL-CIO

Case No. G87 D-474

REPORT OF THE FACT FINDER  
RUSSELL E. PRICE

RECEIVED  
MAY 11 1988  
BUREAU OF EMPLOYMENT RELATIONS  
STATE OF MICHIGAN

REPRESENTING THE PARTIES

For Traverse Bay Area Intermediate School District Board of Education:

Mr. James T. Maatsch, Attorney for the Board  
Mr. Richard E. Asiala, Superintendeht of Schools  
Mr. Charles D. Mayer, Director of Special Education  
Mr. R. Charles Suenther, Assistant Director of Special Education  
Ms. Linda Fink, Deputy Director

For Traverse Bay Area Intermediate School District Teacher Aides:

Bonnie Freeman, Vice Chapter Chairman  
Bonnie Barnes, Steward  
Rose Blodgett, Past Secretary  
Patricia Bannon, Chapter Chairperson  
Leonard Defenbaugh, Council 25 Staff Representative

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INTRODUCTORY MATTERS

On November 20, 1987, Michigan Council No. 25 AFSCME, AFL-CIO

filed a petition for fact finding in behalf of a bargaining unit of 53 employees of the Traverse Bay Area Intermediate School District classified Teacher Aides.

On January 13, 1988, the Michigan Employment Relations Commission notified the parties and appointed Russell E. Price, Esq., as its Fact Finder to conduct a hearing, pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commission's regulations, and to issue a report on the items unresolved between the parties.

#### FACT FINDING HEARING

Upon contact with the parties, it was determined that due to scheduling conflicts, the hearing would be conducted at 10:00 a.m. on March 22, 1988 in the Intermediate School District's offices in Traverse City, Michigan. The parties also waived the requirement of conducting the hearing within 15 days of notification.

In its petition for Fact Finding, Michigan Council No. 25 AFSCME, AFL-CIO, cited the following ten issues as subject to Fact Finding:

1. Article III - Management's Rights
2. Article XIV - Discharge and Discipline
3. Article XVII - Job Postings
4. Article XXII - Grievance Procedure
5. Article XXIII - Evaluation
6. Article XXXVI - Sick Leave
7. Article XXXVIII - Insurance
8. Article XXXIX - Holiday Pay
9. Article XXXVII - Wage Rates
10. Article XXXVII - Wage Rates {Longevity}

At the hearing, the parties advised the Fact Finder that Article XXIII, Evaluation, had been settled, but that Article XIX B - Leaves

of Absence was an additional issue for determination.

Prior to Fact Finding, the parties had engaged in mediation on October 21, 1987, without settlement.

POSITIONS OF THE PARTIES, FINDINGS OF FACT,  
AND RECOMMENDATIONS

Item 1 - Management Rights - Article III, A-1:

The Union makes no change in the current contract for this Article. The District proposed to revise Article III, A-1, to add "to assign and transfer employees in its discretion".

Article III, A-1, would still contain the limitation of the current contract that each particular management right is subject to the other terms of the contract. Therefore, this right to assign and transfer employees would be controlled by the specific contract procedure entitled Job Postings and Bidding Procedures as outlined in Article XVII of the contract.

Therefore, it is the recommendation of the Fact Finder on Item 1 that the contract be revised in Article III, A-1, to state: "To assign and transfer employees subject to the Job Posting and Bidding Procedures and other provisions of this contract".

Item 2 - Discharge and Discipline - Article XIV:

The District proposes to revise Article XIV to eliminate the limitation on consideration of prior employment history in employee discipline. The Union proposes to leave the current contract as is.

The Intermediate School District Exhibit No. 1 shows 8 comparable

school districts and 5 have no limitation on using an employee's prior record. The remaining school districts have limitations of one year, two years, and three years. The Union Exhibit No. 2 indicates that 11 comparable school districts removed the past records of infractions occurring more than two years previously. Based upon the above-findings of fact and the record as a whole, it is recommended that the contract be left as is.

Item 3 - Job Postings - Article XVII:

The district proposes to change the job posting procedure to give the board the right to fill posted vacancies based upon all factors, one of which is seniority of the applicants.

Article XVII C:

The right of determination of employee transfer and to fill posted vacancies is vested with the Board or its designated representatives. The parties recognized that transfers may be necessary. When the board transfers an employee or fills a posted vacancy, it shall take into consideration the preferences of the employee, instructional requirements, and best interests of the pupils and the school system, the qualifications of the employee and seniority. Any proposed transfer shall be discussed with the employee affected prior to the consummation of the transfer- no involuntary transfer of an employee from his/her present assignment to another classroom assignment shall be made for arbitrary or capricious reasons. If an employee is to be involuntarily transferred or if the most senior person is not selected for a posted vacant position, he/she shall have the right, upon written request, to a hearing with the Director of Special Education. (District Ex.#2)

The Union proposed not to change the current contract, which presently provides for filling posted vacancies based upon seniority, if qualifications are equal.

The board offered to provide a grieved employee with the right

to a hearing in front of the Director of Special Education. The teacher's contract for this district already has this same procedure as proposed by the board, and therefore, there would be uniformity throughout the entire district. The 9 comparable contracts submitted in District Exhibit No. 1 have no contract limitations on transferring employees. There is only one job classification in the bargaining unit, and only one pay-rate unit-wide, therefore, there is no pay penalty involved with a job assignment transfer.

Union Exhibit No. 1-A, shows 13 comparable contracts in which the employer posts jobs and has the right to transfer employees to another position without recourse. In 4 of these comparable contracts, seniority governs where qualifications are equal. The District provided testimony and exhibits showing that the proposed change would avoid numerous chain reactions resulting in some cases in 16 transfers to fill one job vacancy. The new proposal would provide flexibility in operation. The one problem with the board's proposal is that it is not subject to the arbitration procedure of the contract.

Based upon the above Findings of Fact and the record as a whole, it is recommended that Article XVII, Job Posting, in the contract be revised to include the provision submitted at the Fact Finding Hearing by the Board and quoted above as District Exhibit No. 2.

#### Item 4 - Grievance Procedure - Article XXII

The Board wishes to add the following language to the current grievance procedure:

"Any grievance not in accordance with the above shall be subject to rejection by management. The Union shall not have the right to file a class action grievance, nor shall it file a grievance without the signature of an individual grievant for which facts of the grievance are appealable."

The Union proposes to leave the contract as it is.

The District requests the above change in the contract in order that it will be clear that an employee must sign her grievance and provide a clear set of facts for each specific grievance. The Union has agreed to these provisions in other contracts.

The Union wants to be able to file group grievances signed by the Union Steward, so that an individual employee will not be intimidated by having to sign an individual grievance.

Based upon the Findings of Fact and the record as a whole, it is recommended that the proposal of the District be interpreted as a clarification of the current contract language stated in Article XXII, Section A-1 (a-f) as follows:

"A grievance shall be defined as an alleged violation of a specific article or section of this Agreement.

1. Written grievances as required herein, shall contain the following:
  - a. It shall be signed by the grievant or grievants.
  - b. It shall be specific.
  - c. It shall contain a synopsis of the facts giving rise to the alleged violation.
  - d. It shall cite the section or subsection of this Contract alleged to have been violated.
  - e. It shall contain the date of the alleged violation.
  - f. It shall specify the relief requested."

Since the contract specifically states that a grievance must meet six requirements to be valid, the District has the right to

reject a grievance if it does not meet these six requirements. Therefore, it makes the contract more clear to spell this out as proposed by the District.

However, the Union should have the right where appropriate, to file a group grievance, or a class action grievance, which should be signed either by the Union or by all members of the group having the grievance. Therefore, I find that the second sentence of the District's proposal be denied, where it states that the Union shall not have the right to file a class action grievance. However, if the grievance is an individual grievance, it should be signed by the grievant concerned, as currently required in Article XXII, A-1 (a).

Item 5 - Sick Leave - Article XXXVI:

The Union proposes to remove the contractual limitation on the amount of sick leave that can be accumulated, which currently is 40 days, and require the district to pay the employee for 50% of the accumulated sick leave upon severance or retirement. The District proposes to leave the current contract as is.

Union Exhibit No. 4 shows that of 13 comparable districts, 10 provide for some pay-out of accumulated unused sick leave upon severance or retirement. District Exhibit No. 1 shows that of 8 comparable districts, 5 provide for some pay-out of accumulated unused sick leave upon severance or retirement. The Union modified its request to provide payment upon severance or retirement, but did not propose any cap. All of the districts in the Union and Inter-

mediate school district exhibits have very restrictive caps before any payment of unused accumulated sick leave is paid out. The parties stated at the hearing that only 2 of the 53 employees in the bargaining unit have accumulated the current maximum of 40 sick days. The comparable school districts as presented by the Union and the District show that there should be some pay-out of unused accumulated sick leave upon severance or retirement, but the school district offered none, and the Union's request for 50% of unlimited accumulation far exceeds industry practice. Therefore, based upon the above Findings of Fact and the record as a whole, it is recommended that for this three-year contract, the sick leave provision be left as is in the current contract. There appears to be a possibility of settlement between the parties. The Union agreed to a cap if presented by the District, but none was presented by the District. Until the parties can resolve more of their differences, the Fact Finder cannot recommend a specific provision. The parties should be able to provide for some pay-out of accumulated unused sick leave upon severance or retirement. Further, at the present time, this is not a critical issue due to the fact that only 2 of the employees in the unit have accumulated the present permissible maximum of 40 days sick leave.

Item 6 - Insurance, Article XXXVIII: ¶

The Union requests that the District pay 50% of the insurance costs for full-time employees during the summer vacation months. The



District proposed that the current contract be left as is. The current contract provides for employer payment only if the employee works.

District Exhibit No. 1 shows that of 8 comparable districts, 7 provide part of the pay for health insurance during summer months. Union Exhibit No. 5 shows that of 13 comparable districts, 5 provide some part of pay for health insurance for the full twelve months. The exhibits further provide that the costs of health insurance are going to increase 226% or by \$77,000.00 over the three year contract term without any improvement in insurance benefits. The Union proposal would increase the cost of insurance an additional 23% or \$37,000.00 in addition to the \$77,000.00 increased cost of present benefits.

Based upon the above Findings of Fact and the record as a whole, it is recommended that the contract leave insurance as is. This recommendation is made because surveys of comparable districts show this district to be consistent with the industry practice. Cost exhibits also show that even without improving the insurance benefits, the costs of the present insurance coverage increases total costs of wage and benefits by 16% over the three-year contract, or an average of 5-1/3% increase each year of the three-year contract.

Item 7 - Holiday Pay - Article XXXIX:

The Union requests to add two holidays, Christmas Eve and New Year's Eve to the current five paid holidays. The District proposes to leave the contract as is. The District Exhibit No. 1 shows that

none of 8 comparable districts provide seven paid holidays and only two provide Christmas Eve as a paid holiday. Union Exhibit No. 6 shows 11 of 13 comparable districts provide seven or more paid holidays. It shows 8 districts provide for Christmas Eve, and 5 districts provide for New Year's Eve. This is a cost proposal and it is equivalent to increasing wages by 1%. The exhibits show that 2 holidays would cost an additional \$4,990.00 per year, and a 1% increase in wages would cost an additional \$4,792.00 per year.

Based upon the above Findings of Fact and the record as a whole, it is recommended that the contract be left as is. In view of the above facts which show the district to be average in the number of paid holidays among comparable districts, it is preferable to leave the contract as is and utilize the cost of 2 additional holidays to increase wages, since this district currently is 10th out of 15 among comparable districts in pay levels in the District's Exhibit No. 1 and 7th out of 12 comparable districts in pay according to Union Exhibit No. 8-A.

Item 8 - Longevity Pay - Article XXXVII:

The Union proposes to add a new step to the Longevity Pay Schedule for 10¢ per hour for employees with 5-8 years service and to increase the other steps of the Longevity Schedule to 15¢, 25¢, and 50¢ respectively. The District offered to increase the three steps of the Longevity Pay Schedule by 5¢ per hour to 15¢, 17¢, and 20¢ respectively.

Union Exhibit No. 7 shows that of 12 comparable districts, only 3 pay more than this district for longevity pay. This district has offered to increase longevity pay by 5¢ per hour, which is a 33%-50% increase in longevity pay for the three levels of the longevity pay schedule. This will provide each employee with a longevity bonus of from \$217.00 per year to \$290.00 per year in longevity pay depending upon their level. The Union's new proposal for paying longevity pay after five years defeats the purpose of an award for long service. The District currently pays longevity pay which is better than 9 out of 12 comparable districts according to Union Exhibits 7 and 7-A. Therefore, based upon the above Findings of Fact and the record as a whole, it is recommended that the District offer of increasing longevity pay in the amount of 5¢ per hour is more realistic than the Union's request for increases ranging from 5¢ to 35¢ per hour.

Item 9 - Wage Rates - Article XXXVII:

The Union's position is for a wage increase of 6½% for each year of the three year contract. The Board's proposal is for a 4½% wage increase for each of the three year contract. The contract currently provides for a pay rate of \$6.50 per hour for all employees with two years of employment. The District's proposal would increase wages by 29¢ per hour, and the Union's proposal would increase wages by 42¢ per hour. District Exhibit No. 1 shows that of 10 comparable school districts, 4 of them increased wages by more than the 4½% offered by the District. The District Exhibit No. 1 also shows that

wages and benefits for all other departments of this district were increased by 6%, except for teachers, who were increased by 8%. The other fringes which are being increased, including longevity and insurance caused total increases for the Aides to average 9.5% per year (28.6% total increase for the three years of the contract).

Union Exhibit No. 8-A shows that out of 10 comparable districts, 5 pay higher wages than this district, but note should be made that several of these comparables are in larger metropolitan areas in the southern part of the state.

Based upon the above Findings of Fact and the record as a whole, it is recommended that wages be increased 5½% the first year, 6% the second year, and 6% the third year. This recommendation is made based upon the fact that no other benefits are being increased by the District except for the 5¢ per hour (equivalent to a 3/4% increase in wages) for longevity pay in the first year of the contract, and this district increased the wages and benefits of all other district employees by 6% per year. It is true that the insurance costs increase each year, but that is due to rising hospitalization costs and it does not provide improved benefits for the employees each year.

Item 10 - Leaves of Absence - Article XIX:

The Union proposes to leave the contract as is. Article XIXB states "Employees shall accrue seniority while on a leave of absence up to a maximum of one (1) year and shall be returned to the position held at the time of leave if open, or to another open position if

qualified, or shall have the right to bump the least senior employee in a position for which he/she is qualified." The District proposes to revise Article XIXB to remove the right to bump when an employee returns from an unpaid leave of absence.

The proposed language states that "an employee shall be restored to his/her former position if open, or another similar position for which he/she is qualified, unless the employee might otherwise be subject to lay-off under other provisions of this contract." The primary change that would be caused by the District's new proposal is that if the employee's former job assignment is no longer open, then the employee would be assigned by the District as opposed to the employee being able to bump into a job he/she selects.

The District did not present cases that would demonstrate that the current contract language causes hardships in administration or is unworkable. Since the weight of the evidence does not support changing the existing contract language, it should remain the same.

Based upon the above Findings of Fact and the record as a whole, it is recommended that the existing contract should remain as it is in the present.

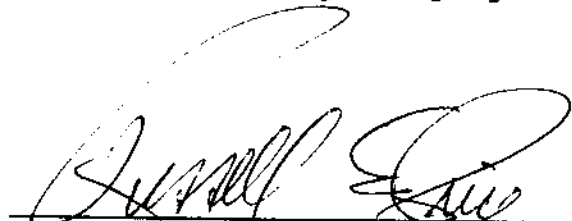
Item 11 - Retroactivity:

The facts presented at the hearing indicated that there was no agreement that the 1987 wage increase would become effective retroactive to July 1, 1987. In the absence of an agreement that wages will be retroactive, the current wage rates as stated in the present

contract continue to be in effect until the new agreement between the parties is agreed upon, ratified and signed.

#### CONCLUSION

The above report, along with the Index to Submissions attached hereto, represents the Findings of Fact and Recommendations arrived at following the hearing conducted by the Fact Finder. Originals of the exhibits have been submitted to the Michigan Employment Relations Commission.



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Russell E. Price

Dated: March 28, 1988

## UNION EXHIBITS

Exhibit #1 - Article III A-1 - Management's Rights and  
Article XVII - Job Postings

Exhibit #1-A - Comparable List of Schools

Exhibit #2 - Article SIV - Discharge Clause

Exhibit #3 - Grievance Procedure Article XXII

Exhibit #4 - Article XXXVI - Sick Leave

Exhibit #5 - Article XXXVIII - Insurance

Exhibit #6 - Article XXXIX - Holiday Pay

Exhibit #7 - Article XXXVII - Longevity

Exhibit #7-A - Longevity, Cont.

Exhibit #8-A - Comparable List of Schools

Exhibit #8 - Wage Increases

TRAVERSE BAY AREA DISTRICT EXHIBITS

Exhibit #1 - Book of Exhibits for the Traverse Bay Area Intermediate School District Board of Education.

- A. Management Rights
- B. Discharge and Discipline
- C. Job Postings
- D. Grievance Procedure
- E. Sick Leave
- F. Insurance
- G. Holiday Pay
- H. Wages

Exhibit #2 - Letter dated August 18, 1986 regarding job postings for an aide position.

Exhibit #3 - Letter dated August 14, 1987 regarding job postings for an aide position.