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9/18/90

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

TROY SCHOOL DISTRICT,

Employer,

-and-

TROY EDUCATION ASSOCIATION,

Labor Organization,

Appearing for the Employer:

John Gierak
Mosher, Vondale, Gierak & Baumhart, P.C.

Appearing for the Labor Organization:

Tom Fette, Executive Director, Avondale Rochester
Education Association
and
Sidney J. Dickstein, Executive Director, South Oakland
Districts Association

REPORT, FINDINGS, AND RECOMMENDATIONS
OF
FACTFINDER BENJAMIN A. KERNER

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

DATED: September 18, 1990

Troy School District

INTRODUCTION

On Tuesday evening, September 11, 1990, the factfinder received notice of his appointment by the Michigan Employment Relations Commission to this case. At that time, a job action by teachers in the Troy School District was exactly one week old. Students had not reported to class, as scheduled for September 4th. Mediation, according to the parties, had been exhausted.

On Wednesday, September 12, 1990, the factfinder held a pre-hearing conference with the parties to learn what issues were in dispute and to set an order for proceeding. On Thursday and Friday, September 13 and 14th, the factfinder held hearings, lasting approximately 10 hours each day, to hear testimony and receive exhibits relevant to the issues in dispute.

The charge of a factfinder under the Labor Mediation Act., M.C.L. 423.10 et seq., is to hold hearings, make recommendations, and make known to the public, the parties, and the Michigan Employment Relations Commission the facts concerning the issues dividing the parties in a labor dispute. The hearings were concluded in this matter on Friday, September 14, 1990. The factfinder is now ready to make his recommendations and findings to the parties, the public and the Employment Relations Commission.

By way of further preliminary comment, I note that each party presented detailed briefing books including exhibits

on the status of disputed issues in comparable communities. The universe of comparable communities most regularly used by both parties was the 28 school districts in Oakland County, of which Troy is one. More specifically, on salary and related economic issues, the parties regularly cited Bloomfield, Birmingham, Farmington, and W. Bloomfield School Districts. In all, the factfinder received 132 exhibits from the Association on the range of issues in dispute; and 54 exhibits from the Employer on economic issues as well as 37 exhibits on non-economic issues. Testimony was received from the following individuals:

Members of the Union bargaining team:

Ruth Augustine
Pauline Bonnici
Suzi Davis
Kathy Garvelink
Kent Hurst
Glen Rexes
Dale Zimmer

and: George Negoshian
Charles Floyd

Members of the Employer Bargaining Team:

Larry Boehms
Kathy Davisson
Barbara Fowler
Maureen Kelly
Mike Williams
Marajeane Zodtner

and: Douglas Stacks

1. **SALARY** (Schedule A)

Association's position: Eight percent (8%) per year for three years.

Board's position: The Board proposes that the 1990-93 salary schedules of either Birmingham or Bloomfield Hills be adopted. Alternatively, the Board proposes that the salary schedule of Southfield, Rochester or Farmington Hills be adopted. As a final alternative, the Board proposes to offer a flat increase of \$2,000 in 1990-91 (with an additional \$500 lump sum cash payment to employees not otherwise receiving an increment or longevity); then five percent (5%) for 1991-92; and five percent (5%) for 1992-93.

ANALYSIS AND RECOMMENDATION

The factfinder received extensive evidence on this issue. The evidence shows that teachers in Troy are paid well above average in the community of 28 school districts in Oakland County. However, when comparing the teachers in Troy with those in Birmingham, Bloomfield, Farmington, and W. Bloomfield, a different picture emerges. The teachers in Troy are paid more than the teachers in these high SEV comparable communities in the County at both the BA level and at the "MA +30 MAX" level, and the Ph.D. level. But at some of the intermediate levels, which in the case of Troy is where a majority of the current teaching staff find themselves on the salary grid, the comparable communities pay better. For instance, a teacher with a Masters degree and 10 years of teaching experience at Troy earned \$47,405 under the 1989-90 salary schedule. If she had been employed in Birmingham, Bloomfield, Farmington, or W. Bloomfield, she would have earned two to four percent (2-4%) more.

Although a minutely detailed analysis is impossible to make under the time constraints the factfinder has imposed on himself to issue this report, I note that approximately 55% of Troy teachers are employed in the middle categories in the salary grid, i.e., in categories where they have extensive education beyond the entry-level requirement ranging from BA + 15 to MA + 25. Thus, in these heavily populated portions of the salary grid, the majority of Troy teachers are not as well paid as their peers in other high SEV school districts.

The Association presented evidence tending to show that the School District, though it has a high degree of ability to pay, as measured by authorized millage, has a relatively low level of actually levied millage. This is true notwithstanding the recently approved, or currently pending School Board levy of an additional 0.85 mills for operating expenses. Thus, the Board's entire range of arguments respecting the need to cut expenses and conserve resources must be placed within the framework of analysis suggested by the undisputable figures showing increased money-raising ability on the part of the School Board.

I credit the School Board's arguments with regard to the need to act conservatively, and in the manner that a business would operate--to cut expenses where possible. But I cannot agree with the derived or implied argument that teachers in Troy should receive something less than the traditionally strong salaries and excellent benefit package

that have helped build the teaching force in Troy, and have helped make the Troy School District one of the premiere models of public education in the State.

With these considerations in mind I have recommended a compromise solution to the wage packages offered by the parties. I believe a six percent (6%) across-the-board increase for each of the next three years would maintain the Troy teachers' position of preeminence while costing the School Board only 1.4% more in the first year than it was prepared to pay in one of its proposed alternatives (and less during the 2nd and 3rd contract years).

2.a. SALARY STRUCTURE AND LONGEVITY PAYMENTS

Association position: The Association proposes to maintain the current structure of longevity payments, based on step increments. Teachers under the current structure obtain annual increments based on the increase in their experience for the first 10 or 11 years of their teaching experience; then they obtain a 1/2 step increment at year 15; a 1 step increment at year 20; and a 1-1/2 step increment at year 25.

Board position: The Board proposes three basic changes in the above-noted structure. First, the Board would eliminate longevity increments in the future, for employees hired after October 1, 1990. Secondly, as to current employees, the Board would not increase the dollar amount of the step increment applicable to calculating the

amount of longevity payments. Thirdly, the Board proposes to reduce the number of categories, sometimes called tracks, into which teachers with differing educational levels would fit. Thus, instead of the currently utilized 12 track system, the Board proposes to go to a seven track system, such as is used in Birmingham. This is called "compression" and would have an obvious cost-saving benefit for the School Board, as well as a wage-reducing effect for teachers.

ANALYSIS AND RECOMMENDATION

The factfinder has studied the data presented by both the School Board and the Association on this subject. The savings from adopting the Board's proposal would be significant. The corresponding impact on teacher salaries would be significant. In essence, the reduction of the number of tracks historically utilized in Troy School District would have a depressing effect on teacher wages for those many teachers who have worked for the system over 11 years. I would characterize such a change as a radical change. I see no reason, given the current financial posture of the school district, to excise this traditional and important part of the teachers' pay package from the settlement for Troy teachers in 1990-92.

Thus, on this subject, I recommend that the Association's proposal be adopted.

2.b. SALARY SCHEDULE APPLICATION (Article 26.3)

With regard to the scheduling of payments to teachers of their longevity pay, the current contract (Article 26.3) calls for annual adjustments to be made in late September.

Association position: The Association proposes that the schedule of payments be increased to twice annually so that teachers who have anniversary-of-employment dates in October (for instance) or November do not need to wait almost a full year to enjoy their longevity pay.

Board position: The School Board is opposed to this suggestion on the grounds of cost. The Board obviously would be required to budget additional funds to pay longevity payments at a half-year interval which otherwise could be delayed until the following October 1st.

ANALYSIS AND RECOMMENDATION

Based on the fundamental fairness of paying teachers for their years of service at a time close to the anniversary date of their start of service, the Association's proposal has merit. I recommend that the parties adopt the Association's proposal on Article 26.3

3. CLASS SIZE (Article 13)

Class size is a key working condition for teachers. It affects their ability to get the job done. It affects their well-being and sense of accomplishment, whether or not it affects their measurable performance. For the School Board, likewise, this is a key issue because of its obvious impact on costs. If the Board must reduce average class size from

30 to 27, the likelihood is great that 10 \pm more teachers will have to be hired. On top of the personnel costs, there are facility costs and restrictions.

The Association proposes to decrease class sizes in the elementary grades, including kindergarten. The Association proposes further that the contractually agreed maxima shall be fixed; so that if the School Board must exceed the maximum for one class, it will hire an additional teacher and split the classes. The Association also proposes that a full-time aide be assigned to each elementary building.

A further delineation of class size is proposed with respect to "lab classes" in the high schools. The essence of the concept is to expand the types of classes that will be considered "lab classes" and to reduce their size from 30 in 1990 to 24 in 1992/93. Further reductions are contemplated in the Association proposal for classes "designed to meet the need of the less able student" such as Basic English, General Math; Pre-Algebra; Practical Geometry; Basic American History (all at high school grade levels). The reductions here are from the current 30 students per class to 25 or 20, or even 15, in some cases.

The School Board proposes smaller cuts in class size for kindergarten, first, second and third grades (from 27 to 26 for K; from 30 to 28 for grades 1, 2, 3). At the high school level, the Board proposes reductions in class size

only for Advanced Placement and Basic Social Studies classes (from 30 to 25). In addition, the School Board proposes that the agreed maxima should be seen as goals only, not as rigid requirements. In the event the School Board exceeds a maximum for a given class, it wants the option of paying the teacher a premium or hiring a half-time teacher's aide to assist the teacher with that class. In any event, the Board would promise, under its proposal, not to exceed the maxima in the 1988-90 contract.

ANALYSIS AND RECOMMENDATIONS

The data on this subject convince me that the Association's proposal is unworkable. The costs involved, although not as much as estimated by the Board (because of the fact that many classes are now below contractual maximum) would still be very considerable, in excess of \$2 million. In addition, the Board would be denied a range of flexibility which it has traditionally enjoyed in the placement of students within classes. Other comparable districts in the County have such flexibility, typically expressed as the right to hire aides (rather than teachers). Some have less flexibility than others. Bloomfield provides no additional relief money to teachers who are over-subscribed and appears to require the hiring of teacher aides. Birmingham, on the other hand, appears to provide for relief money to teachers who are over-subscribed and allows some flexibility in hiring teacher aides. The

practices are too numerous and complex to describe fully here.

It is clear that as a practical, prudent, and fiscally conservative matter, the Board must be permitted some latitude in deciding how to deal with the over-subscription problem. The Board's proposed solution, in effect, of having two contractual maxima, in some instances, one which is a goal and the other of which is an absolute ceiling is a workable concept to solve this problem. Teachers will be reimbursed, and I suggest that the rate should be \$80 per marking period per student over the limit, when the Board must exercise some flexibility to go beyond the goal.

Thus, in sum, I recommend that the parties adopt the Board's proposal, with a revision in 13.2K, requiring a uniform payment of \$80 per marking period per student in all instances of over-subscription.

- 4.a. EARLY RETIREMENT INCENTIVE (Article 33.8)
- b. EARLY RETIREMENT DEPENDENT HEALTH CARE COST
(Article 33.2)

The Association proposes to continue the early retirement incentive plan whereby a teacher can retire (in most instances with 30 years of service, regardless of age) with \$3500 annually in incentive payments for 10 years. The Association would eliminate the MESSA health insurance, and would require the Board to reimburse retirees for dependent health insurance coverage available under the regular MPERS-provided insurance plan.

The Association proposes, most significantly, that the alternative of offering teachers 5 years of universal buy-in retirement credit be made available to all eligible teachers, under this contract.

The School Board proposes the continuation of the current early retirement incentive plan only for the first year of this contract. In addition, the Board has responded to the Union's proposal by indicating its willingness to provide a one-year universal buy-in option for teachers with 28 or 29 years of retirement credit, for the first year of the contract only.

Thus, the most significant feature of the Board's plan is that it provides for a sunset on all early retirement options after the next contract year.

The Board's data on this subject show that the cost of the current plan was almost \$250,000 in 1989/90. The Board points out that there is a margin at which many teachers would retire anyway, with or without an early retirement option. (Of course, as the factfinder pointed out, the obverse is also true: There is a measurable number of teachers who retire early only with the availability of an attractive early retirement option.) Aside from quantifying these groups of teachers (a task which was not within either party's contemplation, or within the scope of the evidence presented), the Board presents a very cogent argument in its statement that there is simply no management need to provide for early retirement: It has no need to

move older teachers off the payroll and make way for younger teachers.

The Association emphasizes the cost savings that would accrue from displacement of older, higher paid teachers with younger, entry-level teachers. Beyond that, the Association portrays the universal buy-in option as a benefit which its members would like to be able to utilize. No compelling educational reason is advanced for giving teachers incentives to leave their work at an early age.

ANALYSIS AND RECOMMENDATION

This issue is one of the most complex issues on the table. The factfinder has studied the Association's proposal in detail. One overwhelming fact appears above the details of the proposed plan: No other school district in Oakland County has anything nearly as generous an early retirement plan as the Association proposes.

Furthermore, it is apparent from the exhibits provided on this subject that relatively few other school districts in Oakland County now provide this option. Rochester School District and Huron Valley are the exceptions. Other school districts which have had such plans in the past (Clarenceville, Ferndale, Birmingham) have either dropped their plans, or are phasing them out currently. It is clear that the Board's proposal has stronger evidentiary support.

(a) For this reason, I would recommend that the parties adopt the Board's proposal on early retirement incentive. (Article 33.8)

(b) I recommend that the parties adopt the Association's proposal for dependent health care coverage for current early retirees. (Article 33.2)

5. HEALTH INSURANCE (Article 25.2)

Currently the teachers have an excellent insurance package, called MESSA Super Care 2, with riders. The plan is well known in education circles and is better in some respects than other MESSA-provided health insurance packages, such as MESSA Super Med, which is available in other districts comparable to Troy. There are different underwriters for these two plans, in one case Blue Cross-Blue Shield of Michigan, and in the other case, Equitable, but both plans are administered by the Michigan Education Special Services Association [MESSA]. Its stated policy is to utilize any cost savings realized through its administration of health insurance to improve benefits under the Plans, or to reduce costs to enrollees.

Association position: The Association's position is to continue the current health and hospitalization insurance plan, coverage, and administrator; with slightly improved benefits.

Board position: The Board's position is to switch to a self-insured benefit package that is ostensibly equivalent to the Super Care 2 package; to reserve to itself

the option to select a particular third party administrator and to re-select such a third party administrator from year-to-year, as the need arises; and, to retain a Michigan Licensed Insurance Counselor to review the self-funded insurance plan to ensure that no fewer benefits are provided than under the current plan.

ANALYSIS AND RECOMMENDATION

The Board has shown evidence that it could save potentially as much as \$750,000 per year with its self-funding plan. There are some holes in the data presented, particularly in extrapolating from the experience of a small maintenance and support workers' unit to a larger teachers' unit. On review of all the evidence available in the hearing, I am inclined to think the Board's calculation of cost savings is over-stated.

There are also other factors of signal importance in the health care insurance arena. These were illustrated in the frank and useful testimony of teacher George Negoshian, as well as by the testimony of members of the Association's bargaining team. I would summarize those concerns as follows:

The Association fears that the level of coverage and benefits provided will not be exactly the same as is provided by the Super Care 2 package.

The Association is concerned that the speed with which claims are paid will be less than satisfactory, when compared to the current health care administrator.

The Association is concerned that other details of the administration of the plans will impact teachers negatively, such as delay in the issuance of a drug card by one organization which is potentially the third party administrator to be utilized here.

The Association is concerned with the confidentiality of the administration of the plan, when in fact the School Board is the ultimate arbiter of whether a claim gets paid or not.

In addition, the Association's expert witness, Charles Floyd, cited a concern with the lack of conversion privileges for enrollees leaving this Employer's employment as another potential problem with the Employer's self-funded plan. It is not clear whether conversion privileges would be characterized by the Employer here as an insurance "benefit."

Even if departing employees are afforded the opportunity for continuation coverage, will they be given coverage at the group rate? This is another aspect of the MESSA Super Care 2 plan that may or may not be continued in the future under the Employer's current promise to provide "duplicate benefits."

These privileges and options under the MESSA plan currently enjoyed by the teachers in Troy are material conditions of employment. See Houghton Lake Education Association v Houghton Lake Community Schools, 109 Mich App 310 NW2d (1981), lv. to appeal denied, 413 Mich 917 (1982). I am not persuaded that these items can or would be duplicated under the Board's plan.

For all the above-stated reasons, I recommend that the parties adopt the Association's health insurance proposal.

- 6.a. OTHER INSURANCE (Article 25.1.25.2)
- b. LEVEL OF LIFE INSURANCE (Article 25.1)

The most important issue presented under this heading was the Association's proposal to combine coverage of all health insurance enrollees to include them in true-group long term disability (LTD) and life insurance coverage through a program called MESSA PAK. The resolution of the health insurance issue in favor of the Association militates, on a cost basis alone, for further resolution of this issue in favor of the Association. Assuming MESSA health care coverage is continued, I find that the Employer would save approximately \$310,000 by providing continuing LTD and MESSA life insurance coverage through the MESSA PAK arrangement, rather than through available alternatives.

Secondly, the Employer has presented the issue of limiting the amount of life insurance coverage to \$50,000 for new hires. The Association proposes to continue the current benefit. Currently, employees are provided twice their annual salary as a level of coverage under the group life insurance program.

A comparison of Troy with the relevant school districts indicates that Troy exceeds all the comparable school districts in the level of this benefit, and by a very significant amount in many cases. Therefore, the Board's proposal to grandfather and grandmother current employees to allow them to continue this benefit at previous rates, but to hire in all new employees with a fixed benefit level of \$50,000 is entirely reasonable.

RECOMMENDATION

(a) I recommend that the parties adopt the Association's proposal on combined administration of health insurance with life insurance, LTD coverage, dental insurance and vision insurance through MESSA PAK.

(b) I recommend that the parties adopt the Employer's proposal on the subject of the level of life insurance.

7. SITE-BASED DECISION MAKING (Proposed Article)

The Association proposes to add an article to the next contract whereby teachers, through their Union, would have access to educational policy-making committees, and in particular, committees at the local (building) level. The Association characterizes this idea as one of the key concepts recommended by the President's Commission on Excellence in Education (see Nation at Risk). The Association wrote this proposal to effectuate the concept in Troy.

The Employer, on the other hand, says that the Union is attempting to establish "veto power" over the development of

educational policy. The Board must maintain its management prerogatives in this area, says the School District. Furthermore, says the Board, it has traditionally worked on a collegial basis with teachers (as educators, not as unionists) to develop and implement new ideas in educational policy. The Board cites the existence of over 90 committees in which teachers participate as professional educators. Finally, the Board notes the lack of comparable "site-based" decision-making arrangements, at least arrangements mandated by contract, in other school districts.

I find the School Board's arguments to be persuasive. The concept of involving teachers as professional educators in the development of educational policy is, no doubt, necessary for the success of any school program. However, it does not follow that the teachers' union must have an institutionalized presence in this setting. I believe the development of educational policy will be served as well by present arrangements--and voluntary involvement of teachers by the school administration, when it deems such involvement appropriate--as by any mandated presence of the union in a formalized way on specified committees.

Of course, my belief is not the proper foundation of an award or a recommendation. However, the lack of much activity in other school districts paralleling the Association's demand in this area is some indication that the Association's demand is either premature (and far in advance of its time) or is simply unnecessary. Future

empirical research, going far beyond the brief statistical evidence provided in this case, and going beyond my capacity to absorb and analyze large amounts of data in a short period of time will be needed to prove or disprove the need for the Association's proposal in this area. For the time being, it is safe to say that the need for such arrangements - on a mandated or institutionalized basis - has not been demonstrated.

I recommend that the parties do not adopt any new article on the subject of site-based decision-making.

8. OFFICER RELEASE TIME (Article 2.10)

The Association proposes to have its President on full-time union release time; or, alternatively, to have two half-time Union officers on release time and available to serve its membership.

The current contract calls for half-time release for one union officer. The School Board argues that this is adequate for a school district and a membership the size of Troy's. The Board argues that comparable school districts have only half-time union release time or less.

I am persuaded that the figures support the Association's position in this matter. The majority of other large school districts in the County do provide for the release of a union officer on a full-time basis. I see no reason why a district with 685 full-time equivalent personnel under its union contract should not have a full-

time union officer, or the equivalent, available to the members of the unit.

I recommend adoption of the Association's proposal.

9. DEFINITION OF COMPLAINTS (Article 3.10)

This is an Article of special importance in very limited situations. It is possible, under current contract language, for the School Board to initiate an investigation of an employee, based on a rumor or a student's complaint or a parent's complaint, without that teacher's being notified until the Board is ready to take personnel action including the filing of Tenure Act charges. Current contract language requires notification to the teacher of any "significant complaints" within one week of their receipt. However, "complaints" is an undefined term.

The Association proposes to define it in a very broad way, as "any written or verbal communication to the district complaining of a teacher's performance or conduct, whether the complaints be anonymous or identified...." Furthermore, the Association proposes to require notification to the teacher before commencement of any investigation of the complaint by the Board. In addition, in the event of student complaints, the Association proposes that union representation is appropriate at the time the School Board's agents first interview the complaining student.

The School Board takes the position that current contract language allows sufficient flexibility to conduct pre-disciplinary investigations of reported or possible

wrong-doing by a teacher, without having to further define the term "complaints." The Board is concerned that notification to a teacher before an investigation is begun will defeat legitimate inquiry, surveillance, or detailing of a continuing pattern of misconduct.

ANALYSIS AND RECOMMENDATION

The Board's view of this problem minimizes legitimate teacher concern about confronting accusers, protecting reputation, and clarifying ambiguous situations. The Association's view of this problem overlooks the School Board's legitimate interest in conducting unimpeded investigations in those relatively few instances where a teacher may be guilty of misconduct that is first brought to the Board's attention by way of a student or a parent complaint.

With respect to anonymous tipsters, the problem is less severe, because the Board must by the very nature of Tenure Act proceedings and grievance arbitration proceedings be able to verify any alleged wrong-doing with reliable evidence, usually obtainable only from identified sources. Absent such evidence, the Board's attempt to discipline a teacher would quickly fail.

I have considered carefully the Association's proposed definition of "complaint." I do not think it will add clarity or adequately define those circumstances in which the Board should provide notification; and differentiate those circumstances where it is not necessary, and where the

Board may legitimately want to investigate without notification. For instance, the definition is overbroad in that it includes anonymous tipsters' information.

The second sentence of the proposed additional paragraph is unworkable for the reason that it requires notification before the beginning of an investigation. This puts an unreasonable burden on the School Board.

However, the concept that a teacher ought to be given some early opportunity to confront his or her identified accuser--particularly in the event of a student complaint--is well-grounded in our traditions of due process. The concept can be applied here with some alteration of the Association's third paragraph.

Thus, in sum, I recommend that the Association's proposal be included in the parties' next contract in modified form, modified by deleting paragraph 1, by deleting paragraph 2, and by adding paragraph 3, as follows:

If a complaint is filed against a named teacher by a student, the teacher (and if the teacher requests, an Association representative) shall have an opportunity to be present at an interview with the student within one week of the registering of the complaint with the School Principal or other School official. However, the School Board will not be required to afford the named teacher this opportunity if it determines within one week that the student's complaint is not a justified basis for any personnel action against the teacher.

This section shall not prevent the School Board from conducting such investigations as it deems necessary with respect to other complaints or allegations of misconduct by a teacher.

10. LAYOFF AND RECALL PROCEDURES (Article 5.9)

The current contract requires recall of the most senior person on layoff regardless of his or her qualifications plus, if needed, the next person who is qualified to do the job.

Association Position: The Association takes the position that the present contract language works; and that there is no need to disrupt the traditional way in which it has worked.

Board Position: The Employer says that the language should be reformed to require the Board to recall the teacher on layoff who is most senior and qualified.

I find that the Board's proposal is more in keeping with accepted practice in both the public and private sectors. I find further that the Troy School District is currently out of step with other school districts in the County with regard to the practice at issue here.

RECOMMENDATION

I recommend that the parties adopt the Board's proposal on this issue.

11. TEACHER QUALIFICATIONS (Article 10.3, 10.4)

Currently, a teacher is considered qualified if he or she is certified in accordance with State law and possesses a major or minor in the subject area taught; or has taught that subject one year within the last 10 years in the Troy School District. Alternatively, the contract allows a

teacher to be considered qualified if he or she is both certified and engaged in a course of study leading to a major or a minor in the area of teaching.

The Board proposes to change the requirement, so that a teacher is considered qualified if she has taught a subject within the last 5, rather than 10 years. Additionally, the Board would grandfather and grandmother all current employees under the "alternative qualifications" language of the contract if they do not meet the requirements for "primary qualifications" under the new proposed language; but the Board would phase out the "alternative qualifications" language.

The Association proposes no changes in this Article. The Association has no objection to the 5 year time period for measuring whether a teacher has "recently" taught a course for purposes of primary qualifications. The Association objects, however, to phasing out the "alternative qualifications" section of the Article. The Association believes this will be too restrictive in the future.

The effect of the Board's proposal is to upgrade teachers' skills and ensure familiarity with the subject area of their teaching. The impact on the current teaching staff would be minimal, because most of the staff are considered qualified under the primary section; those who are not currently qualified under the primary section (for the specific classes they are assigned to teach) would be

given an opportunity to upgrade skills by Board-paid course work leading to a major or a minor concentration in the subjects such teachers are currently teaching.

The proposal has merit for the reason that it upgrades teaching skills, with minimum disruption to current staff.

RECOMMENDATION

I recommend that the parties adopt the Board's proposal on this subject.

12. TEACHING HOURS (Article 12.2)

The current contract does not specify how the time of "traveling teachers" who go from one building to another must be divided, outside of certain maximum work day restrictions (7 hours, 10 minutes) and certain minimum planning time restriction. Within this framework, the Board can assign a traveling teacher to begin later than the starting time for one school or (in another case) to quit later than the quitting time of another school.

The Board has proposed to lengthen the time teachers must be in their classrooms by adding a minute to the time for report to work stations at the start of the school day (secondary schools). The Association proposes no change on this item.

The Association has proposed to restrict the way in which traveling teachers can be assigned, by limiting their start and stop times, to coordinate with student schedules in a particular school. This would have the effect, as the Board points out, of limiting the way in which traveling

teachers can be assigned, at a cost of additional staff. The Board proposes no change on this item.

RECOMMENDATION

No change. The parties are commended to adopt their current contract language.

13. ELEMENTARY PLANNING TIME; PASSING TIME (Article 12.6)

The current contract does not require "passing time" between classes for special education teachers in elementary grades. The current contract requires twenty-five minute planning segments.

The Association proposes to increase the time allotted to planning segments to thirty-five minutes. In addition, the Association's proposal would introduce "passing time" into the schedule of special education teachers, when they normally do not have such time under the current scheduling plan. Students are brought to the gym, or the art room, or the media center at 25 or 30 minute intervals, during which intervals their regular elementary teachers have their scheduled planning periods. The next class arrives in the special (art, music, physical education, or media) class at the same scheduled time as the last class departs back to their regular classroom. Such scheduling has apparently worked well for the physical education teachers, but not for all special subject teachers.

The evidence received on this proposal indicates that the School Board would experience a serious scheduling problem with regard to both teacher utilization and

facilities utilization, if the Association's proposal on passing time were to be adopted. The evidence indicates further that there would be additional staff required to accommodate to the increase or lengthening of planning time. There was no showing by the Association that the currently available planning time is inadequate.

RECOMMENDATION

For these reasons, I am recommending that the parties adopt the Board's proposal on these subjects.

14. DEFINITION OF "PREPARATION" (Article 14.2)

The current contract does not define what a preparation is. In general, the term is used to refer to that identifiable segment of time, energy, and attention that must be devoted to adequately prepare lessons for a given class. If a teacher taught the same class all day long, such as Basic English to 10th graders, that would count as one preparation. If a teacher is assigned to teach a class of Spanish 3 and another class of Spanish 4, that would count as two preparations. Suppose, on the other hand, a teacher is assigned to teach Spanish 3 and Spanish 4 students during the same class hour: Does that count as one preparation or as two preparations?

The current contract does not answer this question. The current language simply says, "No secondary teacher shall have more than three (3) preparations unless the teacher requests or accepts more." The Board proposes no change in this language.

The Association proposes to define "preparation" in a way that says that a teacher with Spanish 3 and Spanish 4 students in one class hour has two preparations.

This definitional problem has ramifications for home living classes, shop classes, higher level foreign language classes, and certain other classes. The Board feels that the needed flexibility is contained in the current language. The Board cites further the cost factor which would be imposed on it, if the Association's proposal were adopted.

The Association feels that quality education demands that the different levels of students sometimes accommodated in one classroom require the recognition that additional preparation time is required. The impact on number of teachers required, says the Association, would be minimal. The educational benefit would be great.

I am persuaded by the evidence on this subject that the Association's proposed language affects relatively few teachers, but that it affects them in a significant way. Likewise, the proposed language would have a significant impact on educational quality for those few students in higher level or specialized subjects who are sometimes accommodated by inclusion in classrooms with another level of students studying the same subject. Thus, there is the real potential for an educational benefit to be derived from this proposal. In addition, the School Board has retained considerable flexibility--as long as it works on a collegial

basis with teachers--in the language "unless the teacher requests or accepts more [preparations]."

RECOMMENDATION:

I recommend that the parties adopt the Association proposal on this subject.

15. VOLUNTARY TRANSFERS (Article 15.7)

Both parties propose alterations in the language of this article. The present language allows the Board to pick one of the three most senior bidders for transfer. The Association proposes to require the School Board to accept the most senior qualified bidder. The Board's proposal would allow it to peremptorily drop one of the three qualified bidders. I have studied both proposals and the supporting evidence. I do not see strong evidence to support any change in the status quo.

RECOMMENDATION:

I recommend that the parties adopt their current contract language.

16. INVOLUNTARY TRANSFERS (Article 15.19)

Currently the parties' agreement spells out reasons for involuntary transfer, all of which are related to reduction in program or accommodating return of teachers on lay-off or leave status. There is no such thing as an involuntary transfer for performance-based reasons.

The Association proposes to continue the current language.

The Board proposes to introduce inadequate performance as an alternative basis for involuntary transfer. The Board cited a few admittedly difficult situations, none of which necessitated personnel action, but which, in the Board's eyes, did necessitate transfer to reduce (or perhaps to hide) a teacher's performance problems.

This proposal has no basis, other than anecdotal, to support it. Rather than introduce a new and unwarranted tool--the opportunity to utilize performance as the basis for involuntary assignment of teachers-- the Board must utilize more traditional mechanisms to deal with performance problems.

RECOMMENDATION:

I recommend that the parties adopt the current contract language, as the Association proposes.

17. PROBATIONARY TEACHERS

The current contract gives probationary teachers who are discharged full recourse to the contract's grievance procedure, including the right (if the Association so decides) to go to arbitration.

The Association proposes to maintain the status quo.

The Board would allow a probationary teacher to appeal the discharge decision to the Board of Education level, but not to arbitration.

The evidence on this subject was abbreviated. There is, however, an assertion by the School Board that the districts of Birmingham, Bloomfield Hills, Farmington, Rochester, and

Southfield do not allow their probationary teachers access to the grievance procedure in the event their contracts are not renewed.

I would agree with the Board that it is appropriate to give the Employer the option not to renew the contract of a probationary teacher, regardless of whether the Board has cause to support its decision. For the same reason, the refusal to renew the contract of a probationary teacher at the end of one year need not be made subject to the contract's grievance arbitration procedure.

RECOMMENDATION:

I would recommend that the parties adopt the School Board's proposal on this subject.

18. PAY FOR SCHOOL SOCIAL WORKERS (Article 26.5)

Currently, these employees are paid on the scale of a teacher with a Masters degree plus 30 (MA + 30) hours of credit. The Association would keep the status quo. The Board would reduce the pay of incoming social workers by putting them on a Masters' level salary track (MA). Current school social workers would be grandfathered and grandmothers to future salaries consistent with their present salary tracks.

The evidence in support of the School Board's position is persuasive. The pay for social workers at other private and public sector enterprises where they have the opportunity to work is considerably less than the pay generally available to them in Troy at the Masters plus 30

track. For this reason, the School Board's proposal has merit.

RECOMMENDATION

I recommend that the parties adopt the Board's proposal.

19. DEPARTMENT HEAD DAYS (Article 32.5)

The current contract indicates that the Department Heads shall notify their Principals in advance regarding days which the Department Heads wish to utilize for departmental business. The nature of this business, it should be noted, is training, curriculum development and accreditation matters.

The Association wants to retain current contract language.

The Board wants to make all Department Head days subject to the Principal's approval. Thus, instead of the current collegial system whereby the Department Head gives advance notice and makes adjustments, if requested to do so (but is not required to adjust), the proposed system would give Principals veto power over the Department Head's plans regarding the scheduling of Department Head days.

The record does not contain any significant evidence indicating a problem with the current collegial system for scheduling of Department Head days. The record also indicates that by and large the Department Heads are inclined to cooperate with their Principals in the original

scheduling and in re-scheduling Department Head days, when requested to do so.

Given this excellent record of collegial accomplishment, I see no reason for disturbing a good thing.

RECOMMENDATION

The parties are commended to settle utilizing current contract language as proposed by the Association.

20.a.SCHOOL CALENDAR (Spring Conference Days)

The current calendar includes two days in the fall, around Thanksgiving, when parents meet teachers. These are scheduled evening events at which teachers, of course, must be present. The School Board expressed a felt need in the community for expanding this parent-teacher opportunity to include two days in the winter/spring semester. The reason, according to the School Board, is that many students have new classes during second term, and the parents need an opportunity to meet the new teachers.

The Association would prefer to schedule two additional spring conference days in the afternoon.

In the best of all possible worlds, the teachers would be accessible to parents on at least two more evenings per year than they currently are. But given the current time constraints in the 1990-91 school calendar, I cannot recommend it for this year.

RECOMMENDATION

The parties should retain the status quo for 1990-91 [no new conference days]. I recommend further that the

parties adopt the School Board's proposal for the last two contract years of this contract.

20.b. SCHOOL CALENDAR (Job Action)

The factfinder requested both parties to present their positions on the issue of whether and how teachers will make up time missed due to the current job action by teachers.

The Association proposes to make up lost days due to the job action and to work a full school year, to the extent possible.

It is the Board's position that if its final offer (prior to the issuance of this Report) were rejected:

It was the Board's intent not to make up those days lost as a result of the strike. The Board believes very deeply that students and parents should not be the only losers in an illegal strike; that the teachers who participated in such an illegal strike must also suffer some loss....

With all due respect to the author of and adherents to the above-stated position, that position is not conducive to settlement of this labor dispute. The Board, it is assumed, is interested in the effects of the current labor disruption on students, above all else! A full school year is needed and is still attainable. The parties are urged to settle all outstanding issue expeditiously without penalizing students or teachers. If necessary, the parties are urged to submit this one issue to binding resolution after the

teachers, students, administrators, and taxpayers of the Troy School District have returned to productive re-engagement.


BENJAMIN A. KERNER
Factfinder

DATED: September 18, 1990