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State of Michigan
Michigan Employment Relations Commission

Before

Gerald E. Granadier
Fact Finder

Tuscola Intermediate School District

Employer

and

MERC Fact Finding
Case No. L92 J-0370

Tri-County Bargaining Association

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STATE OF MICHIGAN
DEPT. OF LABOR
EMPLOYMENT RELATIONS COMMISSION

FACT FINDERS REPORT AND RECOMMENDATION

The undersigned, Gerald E. Granadier, under appointment as a Fact Finding Hearings Officer as of May 14, 1993, by The State of Michigan Department of Labor, Employment Relations Commission, to conduct a Fact Finding Hearing in the above cause, pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commissions Regulations in connection therewith, and to issue a report with recommendations with respect to the matters in disagreement between the above mentioned parties. In accordance therewith, hearings were held on June 14, 1993 and July 13, 1993 at 5095 Exchange Drive, Flint, Michigan.

Appearing on June 14, 1993 for the Tuscola Intermediate School District:

John Moore, Superintendent

Alan Luce, Negotiator-Consultant

Appearing on June 14, 1993 for the Tri-County Bargaining Association:

Don Noble - MEA Uniserv Director

Kathy Daniels - Bargaining Team Member

Penny Letts - Bargaining Team Member

Appearing on July 13, 1993 for the Tuscola Intermediate School District:

Alan Luce - Negotiator-Consultant

John Moore - Superintendent

Al Mahan - Bargaining Team Member

Sharon McLean - Assistant Superintendent

Appearing on July 13, 1993 for the Tri-County Bargaining Association:

Don Noble - MEA Uniserv Director

Rinda Smith - MEA Uniserv Assistant

Penny Letts - Bargaining Team Member

Kathy Kurtis Daniels - Bargaining Team Member

Meredith Dupius - Bargaining Team Member

Cecilia C. Kapcia - Bargaining Team Member

Kurt Eugster - Bargaining Team Member

At the Pre-Hearing Conference on June 14, 1993 the parties discussed the outstanding areas of disagreement and those issues which might be resolved by mutual agreement. In addition the matter of comparables was touched upon and the parties agreed to scheduling of formal hearings and location thereof. In the petition to MERC for Fact Finding the Tri-County Bargaining Association submitted eleven (11) issues. The parties agreed to reduce this to six (6) issues by resolution of (4) issues (as set forth in attachments one (1) through (4) and deferring the issues of "life skills teaching position" to the process of Unit

Clarification through MERC. Those issues which were to be addressed at the July 13, 1993 hearing were the following:

1. Article 11 - Vacancies, Transfers and Promotions, Section 11.3
2. Article 14 - Calendar, Section 14.1
3. Article 14 - Calendar, Section 14.6
4. New Article - Workload
5. Appendix A - Salary
6. Longevity Pay

At the Fact-Finding hearing held on July 13, 1993 the Association presented its exhibits including comparable school districts which it believed were similar in size, location, area, SEV, and other factors which it considered appropriate for consideration. The School District did not submit its exhibits and comparables until the agreed date of August 3, 1993. Both parties have objected to various exhibits and comparables submitted by each other. Your Fact Finder has given due consideration to such objections and has, in the preparation hereof, determined their relevance or lack thereof. Thereafter the parties submitted Briefs setting forth their respective positions and arguments in connection therewith. Accordingly, your Fact Finder Being fully advised in the premises, reports as follows:

Background: It appears to your Fact Finder that the School Board of this District has exercised fiscal responsibility and integrity of the highest order in its undertaking to carry out what it felt were its promises to the taxpayers of their community and in maintaining a School District which they feel meets the needs of a modern society. The teachers and staff in this District, on the

other hand, likewise strongly feel that they have a commitment to the students of this District and appear to be constantly desirous of improving quality education in order to meet the needs of a modern society. With the obvious sincerity of each of the parties herein, the task of determining the recommendations as hereinafter set forth, was indeed a most difficult one.

Negotiations were commenced by the parties and while there is substantial agreement on many issues in their proposed contract for a period covering the school years 1992-1993, 1993-1994 and 1994-1995, and despite the efforts of a state mediator the parties were unable to conclude the agreement.

Discussion and Decision:

1. Article 11 - Vacancies, Transfers and Promotions, Section 11.3

Board Position:

The Board maintains that seniority is not the majority positions among all schools in Tuscola County for vacancies. Only three (3) schools give seniority, in concert with certification, priority. Four (4) schools give seniority some consideration, along with other factors which ultimately have the power to overrule seniority. The Board further maintains that the Union misrepresented the TISD Master Agreement by including TISD in the list of schools which give seniority some consideration. The Board states that the controlling language of this subsection is 11.3 (3) "The parties recognize that, while the Board will continue to adhere to its policy of promotions from within its own teaching staff, the filling of vacancies is a prerogative of the Board".

Association Petition:

The most persuasive evidence that this section of the Contract

should be modified is that the Contract itself lacks consistency by creating several standards for qualifications. Such ambiguities can only lead to ongoing disputes over the intent of the parties in constructing the Contract. The standard of qualification in the Layoff and Recall section of the Contract used in bumping employees in the same discipline is seniority. The standard of qualification used in the Layoff and Recall section of the Contract for bumping out of ones discipline is "certified, trained, licensed or authorized." The standard of qualification for summer vacancies is undefined but referenced to the posting for the vacancy. The standard for qualification in Section 11.3 which is in dispute is very nebulous in by referencing such undefined terms as professional background and attainments, and other relevant factors. While length of service to the District (seniority) is one of the four criteria listed, an employee has no measure of what the other criteria are, or how they are to be used in weighing one employee against another. This also lends itself to the District utilizing different standards from one vacancy to the next. A practice which can only lead to reduced employee morale and potential litigation.

Fact Finders Discussion and Recommendation:

In considering all the information supplied, both in writing and orally, and the exhibits, your Fact Finder has determined that the Boards position relying greatly upon Subsection 11.3 (3) is not warranted. The section additionally provides "-- the Board agrees to give due weight to the professional background and attainments of all applicants, the length of time each has been in the service of the Tuscola Intermediate District and other relevant factors."

Your Fact Finder likewise rejects the position of the Association for the reason that it is and should remain the Boards prerogative to fill vacancies. The Association recommended language leaves no room for same. However your Fact Finder does believe that language should be added to the existing contract language which would clarify ambiguities and protect staff that could apply to fill vacancies for which they would be qualified. Accordingly, the following should be added as Subsection 11.3 (4):

"Applicants with the most seniority within the District and with the certification, experience and training within the vacant discipline shall be given priority by the Board in filling such vacancy."

2. Article 14 - Calendar, Section 14.1

Board Position:

There are at least 260 work days in a calendar year and the TISD 233 day teachers receive at least 27 days off with pay. In addition to the 27 holiday/vacation days off with pay, the TISD 233 day teachers also receive fifteen (15) annual paid sick leave days which includes five (5) paid personal business days. TISD 233 day teachers also receive additional paid time off which is not charged to sick leave, i.e. funeral leave (up to five days per death), court appearance as a witness (unlimited), visitation at other schools, conferences, conventions, attendance as a delegate to Professional Associations, jury duty (unlimited), and paid release time (unlimited) for any judicial, administrative, arbitration and/or fact-finding proceeding.

Association Position:

Schools which are geared to an instructional year of 180 student

days have traditionally placed in that year, breaks at Christmas (10 days) and Easter (6 days). If one looks at the possible work days in any given year, there are 260 work days in which work can be performed. If you subtract the holidays during the year which are celebrated on week days and days school traditionally is not in session (Good Friday, Memorial Day, 4th of July, Labor Day, Thanksgiving and the day after Thanksgiving) you are left with 254 potential work days. If you further subtract a five day Easter break and a 10 day Christmas recess, you are left with 239 potential work days into which a 233 day program must be inserted. In the current contract, calendars for the 1989-90, 1990-91 and 1991-92 school year all reflect a starting date for the next school year of July 15th or later, thus providing the requested vacation period.

Fact Finders Discussion and Recommendation:

This issue relates to the 233 program the TISD provides. The Association desires to assure those teachers a guaranteed two (2) week vacation each summer. The Board, while desirous of accommodating those teachers, does not agree to such a guaranteed vacation. Your Fact Finder agrees with the positions of both parties, however it appears that the positions conflict and that a solution is not easily accomplished. At the hearing your Fact Finder suggested that a resolution of the issue could be made if the parties agreed that if any "Act of God" days (i.e. snow days, etc.) arose which would short the 233 day calendar, with a two (2) week summer vacation, that the teachers make up those shorted days by using their personal business or sick days. The parties seemed to reject that solution, however your Fact Finder remains convinced

that such a solution is appropriate. Accordingly, the recommendation is that the following language be added to Subsection 14.1:

"The Board shall attempt, but not guaranty, to construct the calendar for the 233 day program to provide a two (2) week summer vacation. In the event that there shall be the necessity for make up days, the teachers shall have the option to either use their personal business days, sick days or vacation days."

3. Article 14 - Calendar, Section 14.6

Board Position:

The Board proposes to add to this subsection the following language:

"The intent of this section is to follow the laws, rules, or regulations dealing with requirements to comply with days of instruction dealing with K-12 districts that are served by the TISD. TISD special education, general education, and voc-ed teachers are included under this section. Whether there is or is not a loss of funds regarding this section, the requirements shall not be altered. Efforts will be made to adjust calendars to insure a two (2) week vacation for 233 day employees".

Association Position:

The current Contract language references the state law which as interpreted by the Supreme Court, has no mandatory requirement. The District has now proposed to expand the scope of the language of Section 14.6 by also referencing Rules and Regulations. The Legislature has been content to stay with the program of negative

incentives to get school Districts to provide a minimum of 178 actual days of school. The Intermediate School Districts are not subject to the financial carrot and stick of the State Aid Act, even though the State Board of Education indicates that days of instruction are to be counted the same way as K-12 districts in the Administrative Rules. The Association has indicated a willingness to make up days for the 180 day program in its testimony. Employees should have the ability to depend on scheduled breaks from their employment. Random days off through the year on days which are considered too inclement to hold school can not be considered a substitute for vacation. The District has the ability to offer this accommodation without financial penalty nor loss of service to the constituent K-12 Districts.

Fact Finders Discussion and Recommendation:

Your Fact Finder has fully considered the proposal of the Board and the recommendation of the Association as set forth in its Brief, and the arguments in support of both positions set forth by each of the parties, and rejects both. Your Fact Finder believes that the current Contract language, with modifications for current and succeeding years, is appropriate. Accordingly, the recommendation is that the current contract language shall remain unchanged with the exception of year changes.

4. New Article - Workload

Board Position:

The ISD administration has been assisting and adjusting case loads of six or more disciplines for 20 years. Districts, geography, miles, distances, small schools, and student needs are not widgets on a factory assembly line. Where possible, the administration

coordinates, consults, counsels, and accommodates in conjunction with itinerant persons, disciplines, or departments to equalize service/time requirements. Thereby fractions have been examples of some individual having a 1.08 or a 1.02 (1.00 being a decimal expression of full-time duty, i.e., 6.5 hours per day x 5 equals 32.5 hours of duty per week) where there are other assignments of .89, .99, .91 and .82, etc. We could assist or counsel staff to further split buildings, grades, children, etc., so as to always (for a week? a month?) accomplish a 1.00 for everyone, but such a level of forced equity seems most unnecessary and unwise. The Board has done and will do the following:

In conjunction with the administration, every effort will be made to accommodate an equalized delivery of services by itinerant personnel as feasible via the representatives of that department or discipline. The criteria for determining allocations may include referrals, buildings, districts, special education rooms/students, etc. Each employee must allocate their time appropriately to provide expected services to his/her clients (students, teachers, principals, and colleagues).

Association Position:

Considerable testimony was given regarding the problem of being assigned more than one weeks work in a weeks time by virtue of the process of allocating time entitlements to local school districts. The District has submitted written evidence and testimony (Board Exhibits #2 and 31) denying any need for a new workload provision in the Contract. While the District is unwilling to commit itself with contractual assurances, it does seem to recognize the problem.

The District itself has submitted evidence that there is a need to improve allocation of time among one group of itinerants, the psychologists.

E.M. Mahan has provided written testimony that the District is willing to make every effort to accommodate equalizing work loads. It would therefore seem reasonable that the District should be able to offer that assurance in the Contract using verifiable criteria. No data has been submitted by either party in regard to problems with state guidelines, therefore the following recommendation confines itself to the problem presented.

RECOMMENDATION BY THE ASSOCIATION

New Article: Workload

1. All work loads will be equalized within Disciplines. The criteria for determining load shall be:
 - a. Travel between districts
 - b. Number of buildings
 - c. Number of districts
 - d. Number of clients
 - e. Number of referrals
 - f. Type of referrals
 - g. Paid support personnel
 - h. Other significant job requirements
 - i. Case management load
2. Every effort will be made by the Administration to accommodate an equalized delivery of services by itinerant personnel without causing an employee to be assigned more than five days services to be provided each week.

Fact Finder Discussion and Recommendation:

Your Fact Finder having given due and full consideration to the positions and arguments of both parties finds that there is merit to both. Accordingly, the following is the recommendation for new language to be included in the new contract:

"In conjunction with the administration, every effort will be made to accommodate an equalized delivery of services by

itinerant personnel as feasible via the representatives of that department or discipline. The criteria of determining workload allocation shall be:

- a. Travel between districts
- b. Number of buildings
- c. Number of districts
- d. Number of clients
- e. Number of referrals
- f. Type of referrals
- g. Paid support personnel
- h. Other significant job requirements
- i. Case management load

Each employee must allocate their time appropriately to provide expected services to his/her clients (students, teachers, principles, and colleagues)

5. Appendix A - Salary

Board Position:

The Board maintains that the teachers in the TISD are paid more than any other teachers in Huron, Sanilac and Tuscola Counties. The Board in its Post-Hearing Brief and in its exhibits and analysis thereof devotes much to what it perceives as the inequities and lack of equality between the TISD teachers and the districts to which it believes it ought to be compared, along with comparisons to non-teacher personnel in the TISD. The Boards position is forcefully and fully set forth in its Brief and Exhibits and therefore restating same herein would be superfluous.

Association Position:

The Association maintains that comparison to Tuscola County and Lapeer Intermediate seem applicable to this contract discussion and resolution. The Association, as did the Board, in its Brief and Exhibits and analysis thereof devoted much of its argument for salary increases to the relative position of TISD to comparable

districts and to maintaining its position to such other districts. Its positions are forcefully and adequately set forth and it would likewise be redundant and superfluous to repeat them herein. The Association request for increase in salary are as follows:

1. 1992-1993 - 5.25%
2. 1993-1994 - 4%
3. 1994-1995 - indexed to inflation (all cities index CPI) plus improvement factor of 1%

Fact Finders Discussion and Recommendation:

While the Board did not specifically make an offer of salary it appears that it previously made an offer of 1.8% per year for each year of the three (3) year contract. The Association presented information by way of an article written in the Tuscola County Advertiser dated February 13, 1993 wherein it was reported that an offer of 3.6% per year was made to the Association. Your Fact Finder is well aware that not all newspaper reports are accurate, however the accuracy of their interview and report does not appear to have been refuted convincingly. Since the Fact Finding hearing the State of Michigan has eliminated the property tax as the method of funding education. Nevertheless we must assume that funding will be replaced. Accordingly, we must not permit the changing of the source of funding to affect the resolution of economic issues. The intent of the elimination of the property tax was not to diminish revenue but rather to make funding more equitable. Your Fact Finder believes that TISD will benefit from this new approach. The recommendation herein however is not based on an increase in revenue to the district but only on it remaining at the same level it currently has been.

Your Fact Finder has fully digested and considered all the relevant

comparisons and arguments set forth by the parties in all the oral and written matters submitted and makes the following recommendation for salary increase:

1. 1992-1993 - 4%
2. 1993-1994 - 4%
3. 1994-1995 - 4%

6. Longevity Pay

Board Position:

The Board maintains that longevity payments are not justified based upon its analysis of the total salaries received by TISD teachers as compared to teachers in surrounding districts. It further maintains that the TISD teachers twenty (20) year salaries at the top of the masters maximum abuses the equity system with all other surrounding school districts. The Board submitted numerous charts reflecting its position most forcefully.

Association Position:

The Association proposed for longevity salary increases for teachers who have over twelve (12) years experience with the TISD are the following percentages of base salary:

- | | |
|------------------|------|
| 12-14 years | - 1% |
| 15-19 years | - 2% |
| 20-24 years | - 3% |
| 25 or more years | - 4% |

The Association treated the proposal in a similar manner as it did in its salary proposal. Additionally, it presented evidence of the payment of Longevity Pay in other districts, many of which were comparable to TISD. Again it is unnecessary to set forth in detail that which is set forth above and in the Association's Exhibits and Brief filed herewith.

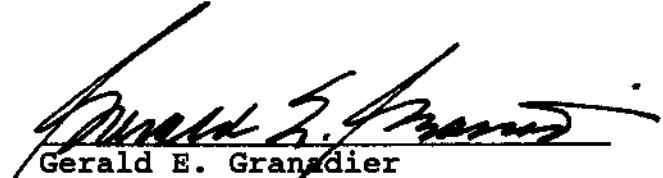
Fact Finders Discussion and Recommendation:

While your Fact Finder fully understands the philosophical and psychological importance of Longevity Pay and its attendant reward and incentive considerations, it would be inappropriate to establish, at this financially perilous time, a new area of pay. Therefore, your Fact Finder recommends no Longevity Pay during the term of this contract.

The Board raised an issue in its Post-Hearing Brief (see page 18) entitled "General Education/School Improvement Coordinator" that the Association did not address. It was not addressed at the Fact Finding Hearing, accordingly your Fact Finder shall not discuss nor recommend a resolution thereof in this Report.

Conclusion

The Fact Finder Hearing Officer points out that the issues discussed in this report along with the attachments hereto were all the major issues submitted by the parties to the Fact Finder. It is my sincere hope that upon adoption of the recommendations herein above set forth that the parties can conclude their collective bargaining negotiations. In the event additional service of your Fact Finder is required, I stand ready to be of continued service.


Gerald E. Grandier
30201 Orchard Lake Road
Suite 160
Farmington Hills, Michigan 48334

Dated: September 3, 1993

ATTACHMENT 1

Article 6 - Compensation

Section 6.11 - Extra Curricular Pay

6.11 Extra Curricular Student Activities:

- 1) When a unit member participates in an approved student activity, during or outside of normal working hours, the unit member will be reimbursed for any personal out-of-pocket expenses related to the activity in the same manner as section 6.10 (1-7) above. Presentation of evidence of said expenses is required. Overtime pay will not be awarded unless agreed to in advance of the specific approved student activity. When a staff member volunteers as a sponsor, and is approved by the Administration in a VICA, DECA, HERO, BPA or other approved club functions, he/she shall receive one percent (1%) of the BA Base. When a staff member volunteers as a coach and is approved by the Administration, he/she shall receive one half percent (1/2%) of the BA Base per sport.
- 2) When a unit member voluntarily participates in an approved student activity during normal working hours, his/her compensation and other benefits shall be maintained.
- 3) When a staff member is required to attend or participate in an approved activity outside of normal working hours, compensation will be awarded the unit member at the leisure time hourly rate.
- 4) For the purpose of this section, approved activities shall mean those activities approved in advance by the immediate supervisor and/or the Superintendent.

ATTACHMENT 2

Article 8 - Insurance

Section 8.2

The Board shall provide without cost to the full-time bargaining unit member who submits a written application MESSA-PAK variation for a full twelve-month period for each employee and his/her eligible dependents. The employer is required to sign an employer participation agreement. Employees not electing MESSA-PAK Plan A will select MESSA-PAK Plan B. Coverage of MESSA-PAK T.I.S.D. variation shall be:

Effective September 1, 1993

Plan A	Plan B
Super Care I	L.T.D. - 66 2/3 Plan I
Delta Dental	Delta Dental
75/75/75: \$1,200	50/50/50: \$1,000
Life - \$30,000 with AD&D	Life - \$30,000 with AD&D
*Vision - VSP - 2	*Vision - VSP - 2
	MEFSA - TSA ** \$45.00 per month

*Effective 94-95 school year Vision VSP - 3

**Effective 94-95 school year MEFSA TSA \$50.00 per month

ATTACHMENT 3

Article 11 - Vacancies, Promotions and Transfers

Section 11.1 and 11.2

- 11.1** A vacancy shall be defined as a position presently unfilled, a position currently filled but which will be open in the future, or a new position that is currently not in existence.
- 11.2** Whenever a vacancy arises or is anticipated, the Superintendent or his/her designee shall post notice of same on the bulletin boards in each building for no less than ten (10) days before the position is filled, and direct a copy of the posting by certified mail to each laid-off teacher and supply a copy to the Association.

ATTACHMENT 4

Nurses Salaries

Nurses salaries would remain a percentage of the BA and be reflected in Appendix A as follows:

1992-93

Nurses' salary computed at 86% of BA.

1993-94

Nurses' salary computed at 88% of BA.

1994-95

Nurses' salary computed at 90% of BA.