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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING)	
)	
between)	REFERENCE
)	
VAN BUREN EDUCATION ASSOCIATION)	MERC Case No.: D82-F3072
)	
and)	REPORT OF THE FACT FINDER,
)	RICHARD H. SENTER
VAN BUREN SCHOOL DISTRICT)	
)	
)	
)	

REPRESENTING THE PARTIES:

For the Petitioner, the Van Buren Education Association:

William Houston, Chief Negotiator and Junior High
Classroom Teacher

Cynthia Coleman, Association President and High School
Counselor

Marylynn Buckowsky, Association Vice President and
Elementary School Classroom Teacher

Connie Baish, Elementary Representative and Elementary
School Classroom Teacher

Bob Harkai, Junior High Representative and Junior High
Classroom Teacher

Dick Steiger, Senior High Representative and Senior High
School Teacher

Bob Kowalczyk, NEA Executive Director

For the Respondent, the Van Buren Public Schools:

Gary Collins, Esq., Chief Negotiator

Elvin Peets, Superintendent of Schools

Raymond Kohr, Director of Personnel

BACKGROUND

In accordance with Michigan State Law, specifically Section 25 of Act 176 of the Public Acts of 1939 as amended, the Van Buren Education Association filed a Petition for Fact Finding with the Michigan Employment Relations Commission on November 18, 1982. The Commission reviewed the matter and concluded that the issues between the parties might be more readily settled if the facts involved were determined and publicly known. Accordingly, by letter dated January 4, 1983, the Commission appointed Richard H. Senter as its Fact Finder and Agent.

PROCEDURE

Proceedings in this particular matter differed from the ordinary. For the record, they are being set forth in detail.

By a conference telephone call on January 7, 1983, between the chief negotiator for each party and the Fact Finder, arrangements were completed to conduct an initial pre-hearing conference on February 1, 1983, to identify unresolved issues. It was further agreed that the parties would meet on February 23, 1983, without the Fact Finder for the purposes of exchanging exhibits, and that the hearing would be held on March 10 and 11, 1983, in the administrative offices of the School District.

By letter dated February 8, 1983, subsequent to the first scheduled meeting, the Employment Relations Commission directed that all pending matters like this be suspended because the agency's budget was exhausted and such services could no longer be provided. The letter further advised that the matter could proceed under the auspices of the Commission, providing the parties were willing to assume the costs of the proceedings. By letter dated February 11, 1983, this Fact Finder responded to the Commission with copies to the parties, suspending proceedings and offering to continue to serve the parties, if they so chose.

This Fact Finder is particularly impressed by the great good faith of all parties in seeking to resolve this matter by agreeing to continue the process with the incurred expenses to be equally shared.

PROCEEDINGS

Hearings were held in the administrative offices of the School District on March 10, 11, 29, and April 27, 1983. The

complete negotiating team of each party was present at all sessions.

The entire proceeding has impressed this Fact Finder by its professionalism. All persons at all times have demonstrated their interest in providing continuing, positive, educational experiences to the students of the District. The exhibits adduced by all parties were extensive, excellently organized, and presented in an interesting and informative manner.

The Fact Finder takes special note of the duration of the negotiations between the parties, the previous labor contract having expired August 28, 1979. The parties have been without a contract for almost four calendar years, although negotiations have been underway the entire period.

The Public, to which this report is directed, as well as the parties, is advised that the proceedings are very, very difficult for the parties. The loyalties and obligations of the parties are multiple and conflicting. Each party is convinced of the "rightness" of its position, both intellectually and emotionally.

It further must be recognized that the final agreement between the parties will be a compromise. The best interest of the students and the community dictate that an agreement be reached by the parties promptly. Experience under the new contract will provide the basis for modifying subsequent contracts.

RECOMMENDATIONS

The Association of Teachers as the petitioning party proceeded first to introduce its issues, item by item, supported by detailed exhibits.

The school administration chose not to respond in detail, item by item, but rather presented its case at the conclusion of the Association's presentation. The employer's basic position is that its inability to pay was the single and sole factor preventing the granting of greater benefits on its own initiative, either by way of direct pay raises or additional or improved fringe benefits.

Thus, the Fact Finder will present his observations generally, item by item, in the sequence utilized by the Association.

In the matter of Tax Sheltered Annuities, it is recommended that all enrollees and their respective plans be "grandfathered in"

so as to protect the investments made to date. Further, it is recommended that the MEA program be made available inasmuch as both parties are agreeable to this. Finally, it is recommended that four additional plans be offered; two to be selected by the Association and two to be selected by the Administration.

The enrollment period should be limited to an opening in October and an opening in February for the ease of administration. Payroll deductions should be forwarded to the company concurrently with the distribution of salary checks to the employees. It is to be noted that this is employee money and there should be no delay in its distribution.

With respect to involuntary transfers, it is recommended that the language proposed by the Association be incorporated in the contract with the exception of the Head Start position to be dealt with hereinafter. The employees are entitled to a stated policy regarding a matter that is now a reality.

The issue of the nonreprisal clause should be resolved by adopting the Association's position and continuing the language of the prior contracts, as set out in Section 16.3. The exhibits and testimony regarding this issue failed to inform the Fact Finder of the basis of the employer seeking to eliminate this clause from the next contract, although protection to the employee has been incorporated in all contracts from 1965, and by the authority of State Law continues until the consummation of the next contract.

The issue of the High School band description should be resolved by incorporating the Association's proposal as set forth on its Exhibit 74-A and 74-B in the contract, as implemented by the Board, with the Pep Band included in the job description of the High School Marching Band. Testimony by the employer in support of relocating the Pep Band was in the nature of conclusions, rather than factual, and failed to substantiate the recommended change.

The issue of the intramural sports program was resolved by the parties on March 11, 1983, when the Board adopted the Association's position, as set forth in Association Exhibit 8.3.

Regarding the issues included in the area of Adult and Community Education Programs, there is the matter of seniority of Head Start Teachers. The Board's proposal is recommended for inclusion in the contract. It appears that the Board on behalf of the students seeks to ensure special competency in this area of expertise that is relatively new in comparison with other areas of traditional teaching. This may be a substantial deviation from the traditional boundaries of seniority rights.

However, it may be appropriate to here begin more closely defining competency without total dependency on seniority.

The matter of seniority for the Off-Campus Coordinator was resolved by the parties prior to the beginning of these hearings.

In the matter of Just Cause, the Association proposal should be adopted. These professional teachers are entitled to the same protection in the Adult and Community Education Program as they are accorded in their other teaching assignments. As employees of the District, they are subject to all of the disciplines of the District and should be accorded the same rights. The Board sought to exclude these teachers from this protection on the basis that the teachers were volunteers, as opposed to contract employees so far as these extra assignments are concerned. The logic of this position was not understood by the Fact Finder.

The recommended pay scale is set forth below:

	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>
Adult Education	\$10.40	\$12.50	\$12.50*
HS Completion	10.40	12.50	12.50*
Tuition Pre School	8.00	9.00	9.00*
Driver's Education	10.70	11.50	11.50*

*Plus 75% of the rise in the DCPI from July 1, 1982 to June 30, 1984.

It is intended that this long-range progression in rates of compensation will result in parity with the consortium.

In the matter of the school calendar, it is recommended for the 1983-84 school year that the Board's proposal be adopted with one modification of beginning the winter recess at the close of school on 12/16/83 and extending the school year in June to compensate for the change. All other elements are to be followed.

For the school year of 1984-85, it is recommended that the Board policy be adopted with one modification of providing February 15 and February 18, 1985 as Winter Break days and extending the school year in June to compensate for the change.

This would provide for a basis of accumulated experience, both within the school system and within the community at large, upon which to base future calendars. The Fact Finder believes that the atmosphere for both teaching and learning is greater in the winter months than it is in the months of either August or June.

In the matter of salary, the Association presented very extensive and informative exhibits setting forth the history of the District millage, growth in State Equalized Valuation of the District, history of the property tax base, history of the General Fund Balance of the District, so far as balances and deficits, and extensive tables ranking the District in many categories with all other districts in the County. Some of the tables ended with the school year of 1980-81, while others reflected the rankings for the school year of 1981-82.

For what it is worth, these tables reveal that this District over the years has consistently been in the lower half of the County districts on the basis of the individual comparison.

The Association also provided the Fact Finder with tables of school districts in Wayne, Oakland and Macomb Counties, with a similar SEV basis. Those tables, including the school year of 1981-82 for the 49 separate districts, reveal that this District was in the 17th place with its BA minimal salary, 29th place with its BA max, 14th place with its MA minimum, and 25th place with its MA max.

If we were to generalize about these positions, we would say salaries are in the upper half. Since a majority of the teachers in the Van Buren Districts are at their maximum, there is added weight to this position.

The table comparing SEV per pupil shows a general decline in ranking, but for the year 1981-82, it was 25th out of 49, again very close to the middle of the group.

The problem of drop in student enrollment is not unique to the Van Buren District. Since the school year of 1976-77, it has remained constant and is in 13th place out of 49 for the 1981-82 school year.

Comparing salary schedules with districts of similar school population, we find approximately the same ranking as when salaries were compared to the SEV.

Pertinent to this type of evidence was the District's Exhibit R-26. Therein it is charted that comparing the ranking of all Wayne County school districts on the basis of

per pupil revenue and the basis of the salary of BS Min, BS Max, MA Min, and MA Max, the salary for all four classifications ranks higher in every year from 1976-77 through 1981-82 than the District rank for per pupil revenue.

The School Board must be recognized as the governing body responsible to the voters in all aspects of providing public education. The Fact Finder must take into account the expression of the voters in the matter of financial support of the District. A review of the District's Exhibit 25 reflects that over the last 12 years (from 6/14/71 - 3/1/83), there have been 32 school elections in which additional mills were sought. In only five of the 32 elections were additional mills voted in. Further, no new mills have been authorized by the voting public since April of 1978, during which time 13 elections for additional mills resulted in defeats for the proposals.

The lack of greater public financial support for the School District cannot be perceived as the fault of one of the parties. Until there is a mutually enthusiastic campaign by the parties to jointly garner community support for additional income, there can be no real additional money for salary increases or fringe benefits.

In the face of the present posture of the voting public, the Fact Finder cannot recommend the District increasing its projected deficits.

The recommendations are designed to allow improvements on the basis of lower deficits than projected.

The matter of retroactivity must be first addressed.

The Association's proposal of salary adjustments provides for retroactive payments for the school years of 1979-80, 1980-81, and 1981-82, together with increases for the school years of 1982-83, 1983-84, and 1984-85.

The retroactive payments are sought for current staff members and retirees who taught in the years covered by the retroactive plan. As a concession to reducing the dollar cost of the entire retroactive package, no payments are sought on behalf of terminated or laid off teachers.

The Fact Finder is prohibited from considering the retroactive elements of the Association proposal in that the Association is seeking benefits for retirees. This is not a mandatory bargainable issue. Present retirees are no longer employees and thus are no longer entitled to the rights, privileges and protection of employees under either State or

Federal Labor Law. The controlling case is Allied Chemical Workers Union v. Pittsburgh Plate Glass, 404 US 157 (1970). The Association's rebuttal and response to fact finding, dated April 27, 1983, beginning at page 18, discusses the Fact Finder's concern in this area. Therein, it is creatively suggested that the law is broader for school employees than for other employees. The Association's continuing and concluding position favors retirees as former employees, but discriminated against terminated or laid off teachers as former employees, thus emphasizing the demands on behalf of retirees.

The position of the employer throughout the fact finding sessions was consistent. Its inability to pay because of the financial condition of the District was the sole basis for rejecting the employees' demands! There were no other reasons presented for not granting the demands.

As a beginning, it is recommended that the 3% improvement factor proposed for the spring of 1983 be implemented immediately, retroactive to the beginning of the second semester of this school year.

The Employer's Exhibit 14 is the estimated revenue for 1982-83. In Account 10 - 311.0 (State Aid Membership) extimated receipts of \$2,424,603.00 are listed, being a decrease of \$384,583.00 from the previous year. It is recognized that the very severe condition of the State of Michigan's fiscal status has constituted large burdens and "unknowns" to school districts throughout the State. It is recommended that any monies provided by the State for 1982-83 in this account over the figure of \$2,424,603.00 be applied exclusively to teachers' salaries to the extent necessary to granting an additional 3% retroactive to the beginning of the school year.

For the school year 1983-84, it is recommended that a 1.5% raise be implemented at the beginning of the school year. Again using the Employer's Exhibit 19, page 2, for the year 1983-84, it is noted that \$410,000.00 is listed as the expected reduction in State aid. It is recommended that the difference in this projection and the State aid actually received be determined at the conclusion of 1983-84 budget period and applied exclusively to teachers' salaries to the extent of an additional 4-1/2% as of the beginning of the 1983-84 school year.

For the school year of 1984-85, it is recommended that teachers' salaries be increased not on a percentage basis, but on a dollar for dollar basis equal to the highest raises accorded any group of School District employees, whether

organized into a bargaining unit or not.

These recommendations are designed to recognize the District's financial condition and to recognize the teachers' value should the financial condition prove to be better than budget projections. The Fact Finder has attempted to recognize and evaluate the very extensive intelligence supplied in this area by the exhibits and incorporated in the presentation.

In the area of fringe benefits, it is recommended that the employer's proposal as contained in 6.3.1 and 6.3.2 and 6.3.3 and 6.3.4 and 6.3.5 and 6.3.6, as implemented with be accepted with option 4 in 6.3.1 and with the life insurance coverage in 6.3.3 be increased to \$25,000.00.

With respect to the dental coverage, it is recommended that the employer be authorized to select the carrier with the understanding that there will be no reduction in benefits formerly provided.

It is recognized that the LTD coverage is not in line with today's real costs. However, improvements in this and other fringe areas cannot be recommended by the Fact Finder.

To date, the employer has not sought a cost sharing of fringe benefits in any manner, although total costs have far exceeded the long-range expectations. That all fringe benefits have a dollar cost to the employer and constitute tax-free income to the employee must be recognized. For these same reasons, the Fact Finder cannot recommend adoption of any other fringe benefit improvements or additions.

The termination date is recommended to be August 28, 1985, as per the position of the Association. The employer recommends the termination date as of the closing of the 1983-84 school year. The Fact Finder urges the 1985 date for the primary reason that it will give the parties an opportunity to fulfill their primary responsibilities with a contract in place. It appears that all parties - the employer, the Association, the students, and the community would benefit from an atmosphere free of the tension present in the absence of a labor contract. It appears to the Fact Finder that the parties need an opportunity to discover areas of mutual interest which will respond to mutual efforts towards success and result in an improved image in the community.

This Fact Finder remains convinced that both parties are dedicated to providing a quality education for the students. Union Exhibit 25.12 sets forth the results of the Michigan

Education Assessment Program for the school years of 1979-80, 1980-81 and 1981-82 for grades 4, 7, and 10 in the areas of Math and Reading.


The 4th grade level improved every year in both subjects.

The 7th grade level rose in Reading over the three-year period.

The 10th grade level rose substantially in Reading during the three years.

These test results prove that an effective, if limited, program has been in place and that the teachers and administrators have worked together to provide an improving program. The Fact Finder recommends that the parties work together to promptly agree to a contract.

DATE: May 20, 1983


Richard H. Senter