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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding Between:

PROFESSIONAL PERSONNEL
VAN DYKE SCHOOLS,

Union,

and

Case No. D86-D1047

Fact Finder: S. Joseph Fauman

VAN DYKE PUBLIC SCHOOLS,

Employer.

Appearances:

For the Union: Ray Glime, Esquire

For the Employer: Michael Dyke

REPORT OF FACT FINDER

BACKGROUND

Bargaining between the parties for the 1986-1987 Master Agreement did not result in agreement by the beginning of the school year in September 1986. After a mediation session on September 11, 1986 both parties requested the Michigan Employment Relations Commission to appoint a Fact Finder. On September 15, 1986, the teachers went on strike for two days. The undersigned was appointed Fact Finder by the Commission on September 26, 1986. The Fact Finder held a preliminary meeting with both parties on October 8, 1986. The meeting established the issues in conflict, set procedures for the Fact Finding hearing to be held on October 17, 1986. Both parties agreed to exchange copies of their exhibits of evidence and furnish them to the Fact Finder

by noon on October 16, 1986. This was done.

ISSUES

The preliminary meeting with the Fact Finder produced agreement by the parties that the Union would prepare its statement of the four issues to be considered by the Fact Finder. The Union insisted that the Fact Finder consider the five issues that it presented on October 17, 1986. The issues listed below were stated by the Union as follows:

1) Compensation (Article II). The Union has proposed a 4.8% across-the-board salary increase for all salary steps for the 1986-1987 school year, plus a 1% cost-of-living allowance (retaining the C.O.L.A. language in the 1986-1987 contract) for a total 5.8% increase. The Union further proposes supplemental and fringe benefit increases, including an increase in the current long-term disability coverage from 60% to 66.67% to a maximum of \$2,000 per month, the cost of all of which would not exceed the sum of \$20,000.

2) Class Size. The Union proposes to reduce the current kindergarten and first grade class size contract limitation (Article IX) from a maximum of 27 to a maximum of 25. Demographics and comparable class size data would reasonably require a decreased class size to this level.

3) Calendar. The Union proposes to retain the current language in Article XVI verbatim, with the addition of the concept of full compensation for alternate "snow days" utilized above and beyond 4 days per school year. The parties agree to

formulate a calendar substantially consistent with the 1985-1986 calendar which appears on page 41 and 42 of the existing contract, provided however, that teachers will not be expected to make up any conferences, open houses or meetings which they may have missed as a result of the teachers being without a calendar or contract prior to the resolution of these issues by the parties.

4) Definition of Vacancy (Article VII). The parties have agreed to have their attorneys redefine "vacancy". The Union has further agreed, at the Board's request, that "teachers" only be subject to recall. As quid pro quo, the Union expects that the Union President shall receive an annual allotment of 10,000 free photocopies to be made at the President's work location during normal working hours and the continuation of a P.P.V.D. office either at Lincoln Junior High School or a comparable office where the President may be employed. In the event that the attorneys for the parties are unable to agree upon suitable definitions, this item will be submitted for the Fact Finder's recommendation.

5) Amnesty Issue. The Union insists upon an understanding from the Board (with a recommendation, if necessary, from the Fact Finder) that under no circumstances will any teacher or union member be disciplined, reprimanded, punished or otherwise be sanctioned economically or otherwise for any incident arising out of the course of employment during the period from the expiration of the current contract to the date of

a successor Master Agreement. All supplemental assignments will be restored as assigned September 2, 1986. The Union will extend amnesty and the same accomodation to the Board and its representatives.

The Union presented a list of issues which had been discussed by the parties upon which agreement had been reached. The Employer agreed that those issues had been resolved.

FINDINGS AND RECOMMENDATIONS

Compensation

The Union proposed a 4.8% across-the-board salary increase for all salary steps for the 1986-1987 contract plus a 1% cost-of-living increase. As evidence for the legitimacy of its request the Union presented the figures, under its proposal, for Van Dyke MA maximum salaries plus 21 years. It presented the same data for nine other school systems, some in Macomb County, some not. The Union said the systems were chosen because they were systems that Van Dyke had athletic and other relationships with. According to the Union these systems were comparable. Results of the comparison showed that even with the Union proposed 5.8% increase, Van Dyke teachers at the MA plus 21 year maximum would still have salaries that were lower than any other of the nine systems, ranging from \$739.00 to \$3,899.00 less. The Union also showed that six of fourteen Macomb County school systems had granted salary increases of more than the 5% that the Employer had proposed. The Michigan Association of School Boards September 3, 1986 report cited by the Union showed that in its

survey of 298 school districts, the 11 which had from 5,001 students to 7,500 students (not including the Van Dyke system which had no 1986-1987 agreement) the average settlement was 6.2%.

The Employer's response to the Union's wage proposal and evidence challenged the validity of the districts compared. The Employer held that the only valid comparison of districts was a within county comparison. In its view the economy of the county, a district's state equalized valuation per pupil, its operating millage and total millage were the proper factors to use to determine ability to pay. From this perspective the Employer pointed out that the Van Dyke school district was 19th highest of the Macomb County school districts in State equalized valuation per membership, 4th highest in operating millage levied, and 3rd highest in total millage levied. With the 5% salary increase the Employer had proposed it asserted that its MA maximum would be the 9th highest in the County. The Union rejected the proposal. The Employer further asserted that since Van Dyke was so low in valuation per member and so high in the millage that it levied as compared to the other Macomb County districts, a 5% salary increase was all that it could reasonably afford. It also pointed out that of the eighteen school districts in the county that had settled on salary increases, half had granted salary increases of 5% or less while half had granted more.

I find the Employer's position that only Macomb County

districts should be considered is sound. Its evidence on valuation per membership, on operating millage and total millage is hardly convincing because the figures presented do not show any simple relationship between valuation, millage levied and teacher salary increases, for example, in the Warren Woods, the Utica and the L'Anse Creuse school districts.

The Employer's Cash Fund Balance also raises questions about how large a salary increase it can pay teachers. The Employer estimated that its 5% salary increase offer would create a deficit in its proposed 1986-1987 budget of \$203,000. The deficit would have been financed by drawing that amount from the Employer's Cash Fund Balance, which on July 1, 1986 amounted to \$1,081,359. It asserted that such a deficit was the maximum amount feasible, considering contingencies. But on September 12, 1986 the Employer's negotiating team sent a letter to the P.P.V.D. membership (Union Exhibit 12) informing them that the team had offered the Union a 5.25% increase. Such an offer would have increased the deficit projected by the Employer to \$224,372 for the teachers only, by my calculations. It would have made the Van Dyke MA maximum the eighth highest in the County. The Union rejected the offer. The Employer's testimony and its Exhibit F placed great importance on the qualifications and length of service of its teaching staff. Of all of its 259 teachers, 195 were at the MA level or higher, and 176 were at maximum salary. The Superintendent pointed out the importance and desirability of such dedication and experience in the system.

It appears that these facts were of importance in inducing the Negotiating team to make the 5.25% salary increase offer. Given the Cash Fund Balance and the Increased salary offer, I conclude that the Employer can afford somewhat more money when it feels it necessary.

The Union proposal for a salary increase requested that 1% of its request of 5.8% be considered C.O.L.A. It further requested that the C.O.L.A. language in the Master Agreement be retained. It pointed out that it did so because in another Union contract with the Employer, the following language was found: "If the 1986-1987 teacher salary schedule is improved by more than five percent (5%), Local 989 pay scale will be adjusted accordingly." The Union position was that the 1% C.O.L.A. it proposed was not a part of the salary schedule and would not trigger other increases. At the fact finding hearing the Employer did not agree with that position. It raised little objection otherwise to retaining the C.O.L.A. language in the Master Agreement. The Employer pointed out that several other Union contracts also called for a 5% salary improvement contingent on the teacher settlement. It holds that any salary increase for teachers beyond 5% would trigger pay increases for the other Unions. The C.O.L.A. language in the Master Agreement supports the Employer's position. The deficit would then be far higher than the amount projected by the Employer in its original offer. A prudent fiscal policy requires that the Employer consider that such a C.O.L.A. as proposed, would trigger other

Union pay increases. Such other increases could cost as much as an additional \$10,000 if a salary increase of 5.25% (including C.O.L.A.) was offered to the teachers. In such case the projected deficit would be approximately \$39,000 more than the deficit estimated in the Employer's 5% salary offer. A 5.5% salary increase for teachers would cost approximately \$31,000 more than the deficit estimated from the Employer's 5.25% salary offer. The Union's 5.8% proposed salary increase including C.O.L.A., and the increases to other Unions that would be triggered, would increase the estimated deficit by approximately \$108,000 over the deficit that would result from the Employer's original salary offer. The Union's original salary proposal meant that it believed the Employer could stand a deficit of approximately \$76,427 over the amount the 5% salary increase would cost. If I accept the Union estimate of the deficit that the Employer could prudently afford, a salary increase for teachers of 5.5% is the most that should be granted. That would make the deficit \$70,000 more than the cost of the Employer's original offer.

I recommend that a 5.5% across-the-board salary increase for all salary steps be granted by the Employer in the 1986-1987 Master Agreement. I recommend that the salary increase of 5.5% be divided into a 5% salary increase and a 0.5% C.O.L.A., and that the C.O.L.A. language of the Master Agreement have added to it the following language: "For the 1986-1987 year C.O.L.A. shall be 0.5% of the 1986-1987 base salary."

The Union also proposed a supplemental and fringe benefit increase. It asked for an increase in the long term disability coverage from 60% to 66.67% with a maximum of \$2,000 per month, the cost of all supplemental and fringe benefit items not to increase beyond \$20,000. The Union pointed out that 13 of 16 school districts surveyed in local number 1 of the MEA have such coverage. It stated that it had been informed that the cost of the proposed increase would be less than the Employer's estimate, but presented no cost figures at the fact finding hearing. It asserted that the \$20,000 cap on all fringe benefits would not be exceeded even if the Employer's cost estimate were used. No objection beyond the cost of the proposal was raised by the Employer. I recommend granting the Union proposal within the limit of \$20,000.

The total cost of my compensation recommendations (a salary increase of 5.5% plus an increase in long term disability coverage) would result in an increase in the 1986-1987 proposed budget deficit of \$31,000 over the amount that would have resulted from the Employer's proposed 5.25% salary increase. The total budget deficit resulting from teacher salary increases of 5.5% only, would be \$254,287 plus an unknown amount if indeed C.O.L.A. for teachers triggers a salary increase for other Unions and their members. The deficit seems high but appears quite manageable in light of the Employer's cash Fund Balance of \$1,081,359.

Class Size

The Union proposed a reduction in the kindergarten and first grade contract size limit (Article IX) from 27 pupils to 25 pupils. Union Exhibit 11 showed current average class size and maximum allowable class size in Van Dyke and nine other school districts. Two of the districts have class size limitations of 25 for kindergarten but are not in Macomb County. An extended analysis of smaller class size and its benefits was made by the Union. No data was presented to show how a class size maximum of 25 was preferable to a maximum of 27. Union Exhibit 12 points out, in the Achievement study, Glass and Smith found that " the amount of increase in achievement is substantially higher for each student by which class size is reduced below 20 than for each student by which class size is reduced from 30 to 20." The actual 1986-1987 class size for Van Dyke shown by the Union, ranged from 17 to 29 for kindergarten and averaged 25. First grades ranged from 22 to 27 and averaged 26. The Employer's evidence at the hearing covered only Macomb County districts. It showed contract requirements and restrictions as well as actual class sizes for kindergarten and first grade. Its data showed that 5 of 21 districts have kindergartens of 24-25 students while 12 of 21 school districts have class sizes of 27 and over. For first grade, its data showed that four districts of 21 have class sizes from 22-25 while 13 of 21 have class sizes of over 27. All districts, except Van Dyke, have contract class sizes that may be exceeded. Van Dyke contract limitations require that if Fourth

Friday class size is 27, it may not be exceeded. No cost data were shown by either party. It appears that currently, the Union request largely is being met. I do not recommend the Union proposal to lower class size limits.

Calendar

The proposed Union calendar would retain current Article XVI language but add a new element. It proposed that if and when "snow days" were in excess of four during the school year, full compensation would be paid for alternate snow days utilized above that limit. No evidence was presented by the Union in support of its proposal nor any estimate of cost. Employer's Exhibits R and S showed that in all Macomb school districts no additional compensation was paid when more than four snow days were used by a district. In its turn the Employer proposed only that, since State law had changed, the last sentence of Article XVI be deleted. This would improve by 2 the number of snow days not required to be made up. I recommend the Employer's proposal.

The Union had also proposed that "teachers will not be expected to make up any conferences, open house or meetings they may have missed as a result of the teachers being without a calendar or contract prior to the resolution of these issues by the parties." At the fact finding hearing the Employer emphasized the importance of parent-teacher conferences and insisted that they must be made up. The importance of parent-teacher conferences was not disputed by the Union. Given the date of this report, it would be possible with a minimum delay

for all such conferences to be held. I therefore recommend that all parent-teacher conferences be held before the Thanksgiving recess.

Definition of Vacancy (Article VII)

The attorneys for the parties have not reached agreement on the definition of vacancy. By letter to the Fact Finder they have communicated their disagreement. They have also indicated that they do not insist on redefining "teacher". The definition of vacancy as far as was agreed upon follows:

A vacancy _____ created by death, retirement, disability, resignation, termination, transfer or creation of a new position provided that a vacancy is not created if the Board of Education elects not to fill the vacated position.

The Union wished to fill the blank space in the definition with either the words "shall be" or as a second choice "is". The Employer wished to fill the blank space by the words "may be". The Employer explained its position by saying that it does not agree that the events listed do, in fact, without more, create vacancies.

In order for a rational recommendation to be made on the definition of vacancy as between the two definitions presented, some explanation of the position of the parties is needed. None was provided by the parties. Vacancy was not discussed at the fact finding hearing. It is a complex subject. When is a vacancy temporary and when is it permanent? When a replacement of a Union member who is ill or disabled is made, how

is it decided if the replacement is temporary or permanent? If a member's duties are redistributed among other members, has a vacancy occurred? These are only a few of the questions that a definition of vacancy must deal with. The Master Agreement has several places in which the term vacancy is used. What are the implications of the proposed definitions of vacancy in these cases, as the parties see them? It is premature to make recommendations without discussion of these and other points. In order to avoid setting a date for another fact finding hearing on this subject to receive testimony on these and other issues related to the definition of vacancy, I suggest that the matter be returned to the parties' attorneys for further discussion. The issue does not appear to be of overwhelming urgency. More discussion may lead to agreement. If not, the matter can be threshed out in the negotiations for the 1987-1988 Master Agreement.

The Union's proposal to have the Employer furnish 10,000 photocopies and office space annually to the P.P.V.D. President seems reasonable. Having heard no objection from the Employer, I recommend its acceptance.

Amnesty

The Union demand was not presented as an issue at the preliminary meeting of the parties. It had not been discussed by the Union at the fact finding hearing. No suggestion or implication was presented by the Union that the Employer had considered or will consider any sanction against any teacher or

Union member, or any assignment change. There is nothing before me on which to base a recommendation. I suggest that should any event as listed by the Union in issue 5 occur, the grievance provisions of the Master Agreement be utilized to resolve the problem thus created.

S. Joseph Fauman

S. JOSEPH FAUMAN, Fact Finder

Dated: Nov. 11, 1986