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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
FACT FINDING

THE SCHOOL DISTRICT OF YPSILANTI

and

MERC No.
D90 G1109

WASHTENAW-LIVINGSTON EDUCATION ASSOCIATION/
YPSILANTI EDUCATION ASSOCIATION.

FACT FINDING REPORT

APPEARANCES:

Fact Finder:

Thomas L. Gravelle

For the School
District:

Richard Kroopnick
James Koster

For the Union:

Richard Gray
Sue Manierston
Mark Jenkins

DATE OF REPORT:

September 6, 1990

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STATE OF MICHIGAN
DEPT. OF EMPLOYMENT RELATIONS
DETROIT OFFICE

Ypsilanti Community School

LABOR AND INDUSTRIAL
RELATIONS COLLECTION
Michigan State University

BACKGROUND

The School District and the Union have been unable to agree to all the terms of a new collective bargaining agreement beginning with the 1990-1991 school year.

On Tuesday morning, September 4, 1990, I was notified that I had been selected to serve as Fact Finder of the parties' differences. Later in the day on September 4, 1990, I held a

fact finding hearing from 4:00 to 11:00 P.M. at MERC's offices in Detroit, Michigan. At this hearing, the parties and their witnesses did a fine job of offering probative evidence and commentary in support of their positions.

ISSUES

The parties have submitted four issues to fact finding. These four issues are:

1. Article 8: VACANCIES, TRANSFERS, PROMOTIONS.

The Union proposes to amend these provisions to increase the rights of unit members with respect to vacancies and transfers.

The School District wishes to retain the existing language.

2. Article 21: BOARD RIGHTS.

The School District proposes to amend this management rights provision by amplifying the management rights contained in the existing language.

The Union wishes to retain the existing language.

3. DURATION OF CONTRACT.

The School District favors a two year contract. The Union favors a one year contract.

4. WAGE INCREASE.

The School District proposes an increase in wages of 2% per year for two years.

The Union proposes an increase in wages of 8% per year for one or two years.

RECOMMENDATIONS AND FINDINGS

RECOMMENDATION NUMBER 1: Delete Two "Finality" Sentences
from Article 8: Vacancies, Transfers, Promotions

My findings in support of this recommendation are as follows:

Article 8 of the parties' contract for the 1989-1990 school year contains detailed provisions concerning vacancies, transfers and promotions (U-19-A). Article 8 encompasses 5 and 1/2 pages of single spaced type.

The Union is concerned about vacancies and transfers in Article 8. The Union argues that despite a great deal of contractual language on vacancies and transfers, employee rights in Article 8 are pretty much limited to vacancies posted on July 1. These rights are contained in present Section 8.150. As to July 1 postings, Section 8.150 says that "the Board shall give the position to the applicant with the greatest seniority and appropriate certification."

The Union has proposed major changes in the vacancy and

transfer provisions of Article 8 (U-19-B). The Union wishes to make rights to vacancies and transfers the rule rather than the exception throughout the year. It supports its proposal with contractual provisions from other Washtenaw-Livingston County Education Association units (U-19-C).

The School District argues that there is no need to change Article 8 because the matters it addresses have been handled fairly by the School District for many years to the apparent satisfaction of the affected teachers. Further, in the negotiations for the 1989-1990 contract, the School District agreed to changes in Article 8 at the Union's request (S-5). The School District concludes that in 1990 Article 8 should be left alone.

Instead of the major overhaul proposed by the Union, I recommend a partial tune up of Article 8. My proposal will preserve the existing framework of Article 8, but will subject aspects of it -- in addition to the July 1 postings -- to the parties' grievance procedure. My proposal is to delete two sentences:

-- The first sentence to be deleted is the last sentence of present section 8.120: "The decision of the Board in filling vacancies shall, however, be final."

-- The second sentence to be deleted is the last sentence of the final paragraph of present section 8.220: "The decision of the Board in making or refusing to make a transfer shall, however, be final."

My reasons for these deletions are that sections 8.120 and 8.220 contain reasonable standards, of benefit to members of the bargaining unit, for filling vacancies and transfers in certain circumstances. To conclude, as the current language does, with statements of finality suggests that even if the School District were to completely disregard the standards of the contract, the affected employee would have no recourse. This seems unjust to me.

On the other hand, these two deletions should be no hindrance to the School District in addressing the vacancy and transfer matters covered by sections 8.120 and 8.220, as long as the School District complies with the standards it has already agreed to in these two sections and which its testimony suggests it has complied with.

Except for these two deletions, I recommend that Article 8 continue as is.

RECOMMENDATION NUMBER 2: No Change in Article 21: Board Rights

My findings in support of this recommendation are as follows:

The present management rights article encompasses about 1/2 page of single spaced type. It lists management rights generally and specifically. As such articles go, it is concise.

Article 21 apparently has worked to the parties' satisfaction. The School District does not claim that it is

seeking to expand its management rights. Rather, the School District argues that it wishes to amplify the language of Article 21 to bring it in line with the contemporary trend of highly articulated management rights clauses.

The Union wishes to retain the existing language. It expressed some concern about laying on additional management rights language.

My recommendation is that present Article 21 be left unchanged. My reasons are that the proposed additions are not claimed to add any substantive rights to the School District's retained rights. Further, the School District has expressed no concern about the operation of Article 21 as it is written. For these reasons, I feel bound by the ancient rule of letting sleeping dogs lie.

RECOMMENDATION NUMBER 3: One Year Contract.

My findings in support of this recommendation are as follows:

The School District's long term financial health bears close watching, especially in light of the discontinuance over the next few years of State funding of post high school remedial education for individuals under 20 years of age. This has been a major program for the School District. However, the School District appears to have some leeway in how it responds to this gradual elimination of State aid. The School District's leeway

includes the number of students it accepts in the remedial education program and the number of staff it retains to administer and teach the program. Currently, the School District's expenses for this program appear to be around \$1,000,000 per year. Mr. Koster explained that later this year the School District is going to carefully review its involvement in this remedial education program. This review and any ensuing changes in the School District's participation in this program could have a material budgetary impact which today could only be guessed at.

Because of the present cloudiness of long-term forecasts and because of a significant (5%) proposed raise for the 1990-1991 school year, I do not feel it would be fair to the parties to go beyond this present school year in recommending wages.

RECOMMENDATION NUMBER 4: 5% Wage Increase.

My findings in support of this recommendation are as follows:

The Union submitted and explained numerous exhibits showing the School District's ability to pay (U-1 through U-4 and U-15) and showing various monetary comparisons between Ypsilanti Schools and 11 other Washtenaw-Livingston Education Association units (U-5 through U-14, U-16, and U-17). The School District's principal witness, James Koster, reviewed the

Union's ability to pay exhibits and offered some helpful clarifications and updates. The witness explained how the millage figures contained in U-3 could be separated into their components, and that the salary costs contained in U-4 should be increased to include seven newly hired teachers. The School District also offered and explained its four year State Aid projections (S-1) and its four year estimates of the financial effects of the parties' proposals on the School District's financial condition (S-2 and S-3). At my request, the School District also prepared four year estimates of the effect of one year raises of 4%, 5%, and 6%. The School District does not dispute the accuracy of the Union's comparability exhibits.

On ability to pay, the Union argues that (a) the School District typically errs on the side of caution in projecting its fund equity or balance (U-1), (b) the School District's own trial projections of fund equity for the end of the 1990-1991 school year are larger than past years' projections (and actualities) (U-1), (c) the tentative, projected fund balance for the end of the 1990-1991 school year is \$4.9 million which represents roughly a 50% increase as a percentage of the School District's current operating expenses (U-2), (d) the School District can anticipate increased revenues of more than 7% for the 1990-1991 school year over the 1989-1990 school year (U-3), and by reason of the reduction of teachers between the two school years from 391 to 381 (including 7 new hires), a 2% raise

for 1990-1991 would result in lower teacher salary costs for 1990-1991 than for 1989-1990, while an 8% raise would result in a rise of only 3.44% in teacher salary costs for 1990-1991 over 1989-1990 (U-4).

The School District argues that if only 1990-1991 were considered (with no concern for the future), a one year raise of 8% would be expensive but bearable. However, one must look to the future and the future gives special ground for pessimism. The major problem is the State's decision to discontinue its funding of post high school remedial education for individuals under 20 years of age. The School District was a major participant in this program. The State's decision is being phased in over a four year period with the 1989-1990 school year serving as the base period. As a result, for 1990-1991, the maximum State assistance available for this program is 65% of what the School District received in 1989-1990. The percentage is to be reduced to 45% for 1991-1992, 25% for 1992-1993, and 0% for 1993-1994 and beyond (S-1). Recently, the School District has been spending about \$1,000,000 per year on this program and in turn has been receiving from the State about \$4,000,000 per year. This program has provided roughly a 4:1 return for the District and receipts have been a material part of the District's budget.

A related problem arising from the discontinuance of this program is that it will result in decreased "student

counts" for the School District, which reduction will have adverse implications for the District's budget. Thus, even though a recent millage victory will serve to offset the School District's reduced State aid in the short run, in the long run the District's budget will be impaired by reason of the State's elimination of all funding for the remedial program, and the School District's ensuing reduction of its "student count."

A further problem is that the Ypsilanti School District is now operating at a total millage rate of 48.7984. The ceiling allowed by law is 50 mills. This means that the School District cannot depend on millage increases to save it from any major deficit it might experience in the future.

The School District understandably does not want to find itself boxed into a deficit a few years from now.

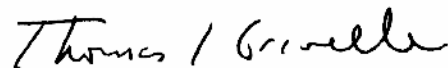
I have carefully reviewed the data furnished and explained by the Union and by the School District. On the difficult issue of the amount of the wage increase, I am persuaded by the School District's present circumstances and by its projection over the next few years of the effect of an 8% increase (S-3) that the 8% raise proposed by the Union might cause the School District to suffer a current loss for the 1991-1992 school year and to be faced with a negative equity by the end of the 1993-94 school year. On the other hand, I am not convinced on the basis of our current state of knowledge that the 2% annual increases proposed by the School District are

necessary to stave off a negative equity sometime in the next few years.

Taking into account all the circumstances facing the School District as discernible today, and with an eye to avoiding erosion of the Ypsilanti teachers' wages in comparison with other teachers in Washtenaw-Livingston Education Association units (U-13, U-14, U-16, U-17), I find that a 5% raise for the 1990-1991 school year would be most appropriate. Therefore, I recommend a 5% raise for the 1990-1991 school year.

September 6, 1990

Respectfully Submitted,



Thomas L. Gravelle
MERC Fact Finder