

1842

**IN THE MATTER
OF THE FACT FINDING
BETWEEN**

SAGINAW TOWNSHIP SCHOOLS,

Employer,

MERC CASE NO: L98 D-3012

-and-

IBT Local 214

Union.

FACT FINDING REPORT AND RECOMMENDATION

RECEIVED
MERC
COMMISSION
DETROIT OFFICE
SEP 11 11 23 AM '98

SEP 11 11 23 AM '98

Handwritten signature and initials

APPEARANCES

Gary D. Patterson
Attorney at Law
Masud, Gilbert and Patterson
4449 Fashion Square Blvd.
Saginaw, MI 48603-1242

Les Barrett
Business Representative
IBT Local 214
2825 Trumbull Ave.
Detroit, MI 48216-1290

ISSUE

On October 29, 1998 Local 214 petitioned for fact finding for the regular full time program assistants at the Saginaw Township Schools. There are five persons in the unit.

An extended fact finding hearing was held on June 17, 1999. All issues were resolved at the hearing except for wages. The wage offers of the parties are as follows:

UNION'S PROPOSAL

	<u>98/99</u>	<u>99/00</u>	<u>00/01</u>	<u>01/02</u>
S	6.92	7.06	7.20	7.34
1	7.37 3.1%	7.41	7.55	7.67
2			7.88	8.00
3		7.76	8.21	8.33
4				8.66
5	7.66 7.1%	8.10 5.7%	8.54 5.4%	8.99 5.2%

MANAGEMENT'S PROPOSAL

	<u>98/99</u>	<u>99/00</u>	<u>00/01</u>	<u>01/02</u>
S	6.92	7.06	7.20	7.34
1	7.37	7.55	7.70	7.97
2				
3				
4				
5	7.66	7.81 7.97	8.13	

The Employer's final proposal was similar to the Union's in the first year, but was less in the remaining years of the contract. The Employer's offer in the remaining years is consistent with other increases that have been afforded to other bargaining units within the District. It is argued by the Employer that inflation has been below 2%, and that is why the 2% offers have been made.

The District denies that program assistants do the same work as the higher paid instruction assistants, and therefore it believes that program assistants are at a lower wage scale. The program assistants, it is maintained, provide toileting, eating and related functions for severally physically handicapped children; in contrast, the District asserts that instruction assistants have responsibility for teaching students.

It is denied by the District that the total wage package of the program assistants has been shown to be below those employees at comparable districts. The Employer argues that program assistants are most comparable to day care workers, who are paid below them.

The Union contends that the evidence supports that program assistants do more than toileting, and that their duties are most consistent with the higher paid classification of teacher assistants. It is asserted that the program assistants perform instructional assistance as well as their other duties, and that they should therefore be paid at a higher rate. The external comparables are also said to strongly support the Union's case in this matter.

REPORT

The crucial issue is whether the program assistants perform instruction; the Union argues that they do, and that they are therefore entitled to compensation at a higher classification; the District argues that they do not perform instruction, and that their work is closer to the lower paid day worker classification.

Fact finding is not the appropriate place to determine if the program assistants are, in fact, engaging in instruction. Suffice it to say that they are prohibited by state law from engaging in instruction.

However, it does appear that the program assistants are in a unique position that is something more than a day care worker, but legally below that of an instruction assistant.

After careful review of the evidence and testimony, I am persuaded that internal comparability is the most appropriate measure, because of the unique characteristics of the program assistant position. In 1998-99 the secretarial unit, where the instruction assistants are present, received a 2% increase. Both the Union and Management are offering wages that increase from 3.1% to 7.1% in the first year for the program assistants.

This increase amounts to an "equity adjustment" for the program assistants, since it is in excess of the pattern for settlement with the other units within the District, and in particular, the instruction aides.

The offer of both parties reflects the need for an equity adjustment to increase the salary of the program aides relative to other bargaining units in the District. The increase that will be awarded to the program assistants in the first year exceeds that of any other bargaining unit within the Saginaw Township Community Schools.

The key question is the subsequent years of the contract. The Union would continue the "equity adjustment" by offering raises that exceed 5%; the Employer would place the program assistants in line with the other bargaining units within the District at 2%.

The program assistants are clearly dedicated individuals, and I understand that they believe that they should be compensated for performing instructional activities. However, as I previously indicated, it is illegal for the program assistants to perform instruction, and therefore it would be improper for me to recommend additional pay based upon an illegal activity.

The Michigan Department of Education policy on program assistants states:

8. Special Education program assistants are authorized under R340.1738 and R340.1748. Program assistants are assigned to Special Education teachers or to instructional aides and are involved in the feeding, lifting and individualized care of severely mentally and severely multiply impaired student. **School Districts which employ program assistants must limit their activities to non-instructional duties related to caring for the severely mentally and severely multiply impaired students.**

The State Board of Education further indicates in a response to questions:

Program assistants are non-instructional aides who provide support service to the teacher and instructional aide. These services include feeding, lifting, toileting, supervision of children to and from the classroom, monitoring children during lunch hour and on the playground where these activities are not part of the instructional day, helping children on and off the bus, and so forth.

The equity increase proposed by the Union seeks to place the program assistants closer to the instruction aides: while a significant improvement, as proposed in the first year, is appropriate, there isn't a legal basis for placing program assistants on a par with instructional aides, since only instructional aides are legally permitted to perform instruction.

The Employer's offer provides an equity adjustment relative to other District employees, but does not place the program assistants at the same level as instructional aides. Therefore, the Employer's offer should be recommended.

I would once again indicate that the program assistants are obviously wonderful people who do a very difficult job for not a lot of money. However, because I cannot legally compensate them for instruction which they should not be doing, the Employer's offer should be recommended.

RECOMMENDATION

The Employer's wage offer is recommended.



Mark J. Glazer
Fact Finder

September 10, 1999