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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding Between:

VAN BUREN BOARD OF EDUCATION

-and- Case No. D86 K-2111

VAN BUREN ADMINISTRATORS AND
SUPERVISORS ASSOCIATION

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REPORT OF THE FACT FINDER

IMPARTIAL FACT FINDER:

Donald F. Sugerman, Arbitrator and Attorney at Law

APPEARANCES:

Gary J. Collins, Esq. of Collins & Blaha, P.C. for the Board

Bruce J. Romant, Assistant Principal and Chief Negotiator for the Association

Introduction

The last collective bargaining agreement between the Van Buren Board of Education (Board) and the Van Buren Administrators and Supervisors Association (Association) expired on June 30, 1986. Negotiations for a replacement Agreement were unproductive (even with the assistance of a mediator). Therefore, on May 6, 1987, the Association filed a petition for fact finding with the

Michigan Employment Relations Commission (MERC). It listed the following issues in dispute:

1. Salary improvement
2. Retirement benefits
3. Protection from litigation resulting from performance of duties
4. Additional compensation day and regulating language
5. Health care coverage and contingencies
6. Vision, legal, and dental benefit guarantees.

On June 19th, the undersigned was appointed by MERC to serve as the fact finder. A pre-hearing conference was held on July 15th; the parties exchanged exhibits on September 9th, and; a hearing was held on September 21st. At the hearing, the parties had the opportunity to examine and cross examine witnesses, to present other probative evidence bearing on the issues, and to argue their respective positions. Contemporaneous with this fact finding proceeding (and impacting thereon) was another set of negotiations.

The Board was negotiating with the Van Buren Education Association (VBEA)--the representative of its 345 teachers--for an agreement to replace the one that expired on June 30, 1987.[1] Those negotiations also produced a stalemate and a three week strike ensued that lasted until late October when a tentative accord was reached and teachers returned to work. In view of this settlement, the fact finder held a conference with the parties on October 29th. At the conference, the Board presented an improved wage offer to the Association. The increase, however, did not

[1] The agreements covering administrators and teachers generally expire in different years. The last agreement with the teachers was for the years 85/86 and 86/87.

overcome the philosophical differences that prevented agreement on this item in the first place.

With this background, the items in dispute between the Board and the Association will now be discussed.

1. SALARY IMPROVEMENT

For the school year 1986/1987 (which was the last year of a two year agreement), teachers received a six percent increase in the salary schedule and an additional four percent that was not included in the schedule. Since it was unscheduled, the latter increase amounts to a bonus. In negotiations with the Association, the Board offered this same scheduled increase, but steadfastly refused any unscheduled increase. The Association insisted upon the mirror image of the teachers' wage settlement. This disagreement is the single most important factor precipitating the impasse.

The Board's position is based on its "market survey" that ranks--by salary--teachers and administrators in Wayne County. For the 86/87 year, the survey shows Van Buren teachers in the bottom third among their peers and Van Buren administrators in the top third. The Board argues that the unscheduled increase was necessary to improve the ranking of teachers, but there was no need to do so for administrators who were already in a favorable position *vis-a-vis* their counterparts. The same claim is made for the years 87/88 and 88/89 which are also in dispute.

The Association claims that historically, administrators have received the same percentage increases as teachers. This, it argues, makes good sense; as former teachers, administrators should receive the same increase (and improved benefits). To do otherwise will narrow or even eliminate the differences between the two classifications and create an anomaly--supervisors receiving less than those they supervise.[2] The Association contends that it would be unfair and inequitable to deny administrators the same percentage increase given to teachers.

A word must be said at the outset about the Board's financial situation; in other words, its ability (or inability) to pay the proposed increases. Quite naturally, the Board urges caution in this area. It has painted a rather dismal picture of its future: An in-formula school district; a declining enrollment; an overtaxed citizenry, and; little prospect of raising the existing millage.

The Board's pessimism seems overstated. It has a record of prudence, efficiency, and economy of operation for which it has the right to be proud. Indeed, for the 86/87 year, the Board had the highest fund equity in recent history. The twenty administrators constitute roughly three percent of the work force and their salaries--while hardly insignificant--account for only a small segment of the Board's budget. For that reason, the

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[2] Supervisors work more days than teachers. To avoid the pitfall of comparing apples and oranges, the parties have set forth the per diem earnings for each classification.

increases here under consideration will not materially affect the Board's financial condition.

The Board's argument that its teachers salaries need special adjustment because of their low ranking in the county is certainly not frivolous. However, it is difficult to give it overriding consideration because unscheduled increases are, as the name implies, transitory; they do not improve the base but rather serve the political needs of the parties. The Board and the VBEA appear to have partially solved this problem by agreeing to continued (albeit decreasing) unscheduled raises.

The Association seems to suggest that administrators are to forever walk lock step with teachers on every increase (or decrease) in wages. This too is an overstatement that cannot be endorsed. For the last eleven years there has been a parallel patterning of increases between the two classifications--with only slight variations.[3] The most significant departure was in 83/84 when teachers received a 3.5% increase while administrators salaries were frozen. The freeze was the result of large increases in the stipend paid to administrators for advanced degrees. The increases (over the previous two years) brought the groups into parity.

The goal of a fact finder is to recommend an agreement that the parties would have reached had the process of collective bargaining worked; history, logic, and common sense play

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[3] In 78/79 teacher received 2% more than administrators. But the next year, administrators received 2% more than teachers.

important roles is making such an evaluation. With the minor adjustments referred to above, administrators have customarily received the same percentage increase as teachers.[4] This undoubtedly is because both are certificated personnel, administrators ordinarily are promoted from the ranks of teachers, and, quite naturally, persons in the two classifications work in close harmony with one another.

This history of compatable increases is entitled to great weight. Indeed, in the scheme of things, it must be given more weight than the more tenuous claim concerning underpayment of teachers.[5] The time to change long standing practices achieved through voluntary agreement is when there is a change (or impending change) in circumstances; for example, a reduction of state aid, a deficit, or some similar occurrence.[6] Given the financial stability of the district, and the fact that the

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[4] The 85/86 year was the first one in which the Board negotiated unscheduled increases. Teachers received 2% (and an additional 6% on the schedule). It is significant to note that administrators received an identical raise; scheduled and unscheduled.

[5] The alleged disparity was not an overnight occurance and must have been in place in 1985/86. However, in that year, the Board saw fit to treat the two groups identically; both received scheduled increases of 6%, and, even more importantly, unscheduled increases of 2%.

[6] Other districts have sometimes found it necessary to discontinue these parallel percentage increases. In doing so they have used a variety of plans to insure that supervisors received wages and benefits commensurate with their standing, responsibilities and authority. Some years ago, when Detroit faced a large (as opposed to the now massive) deficit, the parties agreed to eliminate an index system, but maintained the dollar differential between teachers and supervisors.

unscheduled raises will not unfavorably impact on the Board's financial condition, administrators and teachers should continue to be considered *pari passu* as they have been for more than a decade. I recommend that--for the time being--the practice of tandem increases for administrators be followed.

2. RETIREMENT BENEFITS

Administrators who retire under the Michigan School Employees Retirement System with 15 years of in-district service receive a one-time grant of $10.00 for each unused sick day--to a maximum of $550.00. The Association proposes to significantly change this benefit and the Board opposes any change. The Association would reduce the eligibility requirement from 15 to 10 years and couple the one-time payment to 10% of current salary. Even if each administrator now has the full compliment of unused sick days, the proposal, if adopted, will increase the cost to the Board tenfold for each retiree.

The Association's rationale is that administrators are not where they should be. In support of this contention, it points to higher retirement incentives paid to administrators in what is described as comparable districts. The Association referred to this proposal as the starting point for negotiations--to get the Board's attention since it would not consider any improvement at all. The Board believes that any increase is unwarranted.

Because of the extreme positions taken by the parties during negotiations, I find it difficult to determine what agreement

they would have made if bargaining had been conducted under laboratory conditions. It seems likely that the settlement with the VBEA would have played an important part in determining this item. There, the parties agreed to increase the $10. fee to $15. and to raise the cap to $1050. The early notice or incentive bonus appears to be as applicable to adiminstrators as it is to teachers.[7] Therefore, I recommend that it be put into place here.

3. PROTECTION FROM LITIGATION

The Association requests that the following provision from the teachers' agreement be incorporated in its Agreement:

> If any Employee is sued as a result of the performance of their (sic) duties, the Employer will provide legal counsel and render all necessary assistance to the employee in their (sic) defense. (Article XII, Section 12.11).

The only language in the Agreement on this subject refers to the Board notifying the Association of any changes in its liability insurance policy and that it will endeavor to continue the existing umbrella coverage. (Article VIII, Section 8.3).[8]

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[7] I recommend that this provision operate prospectively. It would apply to administrators retiring after the ratification of the Agreement. While there may be a slight cost increase to the Board (assuming the administrator has sufficient days in his bank) it would probably be more than offset by the lower increment (and possibly smaller stipend) paid to the entry level replacement.

[8] The Association also claims that its members are entitled to be protected from litigation because such protection is a fringe benefit and paragraph 5 of the Tenure of Employment Contract between the Board and its individual members reads, in relevant part, as follows:

The Association claims that liability for administrators is greater than for teachers and it is improper to provide the coverage for employees and not their supervisors. The reason it raises the issue at this time (the situation has not changed for many years) is that it claims the threat of law suits is now greater given the proclivity of people to sue.

The Board's proposal is as follows:

> If an administrator is sued as a result of the performance of his/her duties, the school shall notify the appropriate insurance carrier. If the insurance carrier deems appropriate, it may provide counsel for the administrator.

A lawsuit against an administrator would very likely also include the Board as a party defendant. In that event, the Board (or its carrier) would undoubtedly represent the administrator too. Thus, there is some built-in protection. But a litiguous society is hardly a new development or a material change in circumstances. Since such a clause has not previously been a part of the Agreement, it is likely that it would not have been agreed to in the lastest round of negotiations. For these reasons, I recommend that the Board's proposal be adopted.

> Insurance, sick leave, and other fringe benefits shall be as provided by the Board for administrative staff from time to time, but shall not be less than those provided to teachers. (Assn. Ex. 9).

Suffice it to say that the differences in the two collective bargaining agreements have existed for some time. In any event, interpretation of provisions in these individual contracts is not within the province of the fact finder.

4. ADDITIONAL COMPENSATION DAY

Since 1984, the Board has guaranteed administrators one compensation day that may be used as a personal business day in accordance with contract language. The Association seeks to increase this to two days, add unused compensations days to accumulated sick leave, and permit the superintendent to approve additional compensation days or compensation time. The Association claims that one comp day is inadequate to make-up for all of the extra curricular work its members perform.

A syllogism explains the basis for the Association's claim. Two comp days are given to the 15 or so teachers who participate in an annual 5 day/4 night camp program for middle school students. The cumulative time spent by administrators on extra curricular activities exceeds that of teachers who attend the camp program. Therefore, administrators are entitled to two comp days.

The evidence does not support the Association's request. I presume that the parties agreed to the one day of comp time in their last Agreement to compensate administrators for, among other things, the time they spend in extra curricular activities. Since no evidence was presented to show that there has been a change in circumstances, such as a material increase in such activities, there is no reason to consider enlarging their

entitlement at this time. I therefore recommend that the request for an additional comp day be denied.[9]

5. HEALTH INSURANCE

Under the agreement between the VBEA and the Board, teachers have the option of health care coverage under Blue Cross, M.E.S.S.A. (which is now underwritten by Blue Cross) or (as a result of the latest negotiations) through a health maintenance organization. A teacher cannot be covered by any of these plans if he or she is covered under another insurance plan (unless coverage under the other plan is required). Each teacher who elects not to participate in a Board sponsored plan receives a benefit bundle consisting of a tax sheltered annuity, additional life insurance (with accidental death and dismemberment provisions) and legal insurance.

The Agreement between the Association and the Board contains the following language:

> Hospital insurance shall be as provided by the Board for administrative staff from time to time but shall not be less than that provided the teachers. (Article VIII, Section 8.1 c.).[10]

The Board proposes that administrators be covered by the M.E.S.S.A. plan, that the phrase "but shall not be less than that provided the teachers" be deleted from Section 8.1.c., above, and

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[9] Of course, the superintendent may grant additional comp time without the need for amending the contract to so provide.

[10] Similar language is found in the Tenure of Employment Contract between individual administrators and the Board. (Assn. Ex. 9).

that duplication of benefits be stopped. The Board's position is based on the dramatic rise in health care benefit costs; for 1987/88 it will pay $4,788.00 for full family coverage.

The Association opposes the removal of the "me too" language from Section 8.1.c. as well as the prohibition of "other coverage." First, it portends difficult times without the tandem provisions. Second, while it believes that none of its members would decline coverage, it does not understand the Board's refusal to make the same bundle of benefits (given to the teachers) available to its members who do not participate in the health care programs.

For the reasons set forth in the discussion about wages, there appears to be no cogent reason for deleting the quoted language from Section 8.1.c. at this time. Parenthetically, it is noted that even if the language was removed, the corresponding provision in the Tenure of Employment Contract would possibly foreclose the Board from making radical changes--at least as to those administrators whose contracts were still in force. This does not end the inquiry.[11]

The operative words, "Hospital insurance...shall not be less than that provided the teachers" does not require the Board to provide the same insurance policy to both groups. Rather, it requires that the type and level of benefits for administrators

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[11] The only change proposed by the Board for Dental and Vision care is to eliminate identical language from the Agreement. The same rationale applies to this proposal as to the one concerning health insurance.

must at least equal those provided to teachers. It also means that access to these benefits must meet the same test. Since the M.E.S.S.A. and Blue Cross programs were not made a part of the record, no determination can be made on whether the Board's proposal to limit coverage to the M.E.S.S.A. plan satisfies this criteria. Accordingly, this matter must be left for resolution by the parties.

The Board proposal against duplication of coverage has great appeal. With medical care costs out-stripping many, if not all, of the major cost items in our economy, dual insurance is a luxury that employers (and ultimately the public) should not be required to underwrite. Certainly there may be some difficulties e.g., where the other plan is not as comprehensive as the Board's. But that is not reason enough to disregard a logical solution to the problem. To off-set the possibility of such a deficiency, the "bundle of benefits" should accompany this change.[12] It is the *quid pro quo* for reducing benefits and even if elected will save the Board money.

I recommend that the health insurance plan be patterned after the one in place between the VBEA and the Board.

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[12] This benefit must be prospective. Therefore, the settlement should follow that of the teachers: The first year would correspond to the 85/86 provisions ($1000. T.S.A., $10,000. added life with A.D.& D., and legal insurance) and the second would parallel the 86/87 provisions.

SUMMARY OF CONCLUSIONS

For the reasons set forth above, I recommend the following disposition of the issues separating the parties:

1. That unscheduled wage increases be granted for 86/87, 87/88, and 88/89 of 4%, 3%, and 2% respectively.

2. That the retirement provision be raised to $15. per unused sick day with a cap of $1050.

3. That the Board's proposal on liability be accepted.

4. That there be no increase of compensation days.

5. That Health, Dental, and Vision care insurance (and the corresponding caferteria benefits) track those contained in the VBEA agreement.

Donald F. Sugerman, Fact-Finder

Bloomfield Hills, Michigan
November 26, 1987