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9/9/87

STATE OF MICHIGAN  
DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

\* \* \* \* \*

IN THE MATTER OF THE

FACT FINDING BETWEEN:

WAVERLY COMMUNITY SCHOOLS

MERC Fact Finding Case  
No. L87-E355

-and-

MICHIGAN EDUCATION ASSOCIATION.

\* \* \* \* \*

FACT FINDING RECOMMENDATION

INTRODUCTION

Pursuant to Section 25 of Act 176, Public Acts of 1939 as amended, and General Rules and Regulations of the Michigan Employment Relations Commission, (Commission), the Commission, on its own motion initiated Fact Finding by concluding that matters in disagreement between the above parties would be more readily settled if the facts involved in the disagreement were determined and publicly known. Accordingly on September 8, 1987, the undersigned, Marc G. Whitefield was appointed by the Commission to act as Fact Finder. On September 9, 1987 the parties through their respective representatives, Mr. Jack Midgley for Waverly Community Schools (District), and Mr. Paul Almlie for the Michigan Education Association (Association), were contacted by the undersigned and advised that a Fact Finding Hearing would be held on Thursday, September 10, 1987 at 1:00 p.m. at the Commission's

Sparma repeated that the District still would not participate. After receiving confirmation that the District would not participate in the fact finding process, there was no further purpose in delaying the proceedings and the Hearing began at approximately 11:00 a.m.

#### APPEARANCES

##### FOR THE DISTRICT:

None

##### FOR THE ASSOCIATION:

Allen B. Morrison - Uniserv Director  
Paul M. Almli - Uniserv Director  
David J. Houston - Attorney  
Kathryn A. VanDagens - Attorney  
Gary L. Lewis - Member  
Jeffrey Wood - WEA President  
Joyce Preston - Member  
Kathy Booth - Member  
Evelyn Yando - Member

#### HISTORY

The parties' prior collective bargaining agreement terminated on June 30, 1987. The bargaining unit which consists of approximately 207 employees is described as follows:

All full time and regular part time contracted professional teaching personnel, counselors, and coordinators certified by the Michigan Department of Education and employed by the Board of Education of the Waverly Schools including teachers of tenure and probation, but excluding all personnel with the power to hire, dismiss, or effectively recommend the hiring or dismissal of personnel, as well as administrators, supervisors, substitutes, nurses, aides, non-certified personnel, and all other employees.

For the current year, the District has approximately 3280 students, with an operating budget of 15 million dollars and an operating millage levy of 31 mills. Its geographic boundaries

encompass portions of Grand Ledge, Holt, and Lansing, as well as Water, Windsor and Delta Townships.

Preliminary discussions began in December 1986 and continued for six (6) meetings through March 1987. Formal bargaining began March 13, 1987 and continued for 23 sessions consisting of 105 negotiation hours through September 5, 1987. On August 31, 1987, bargaining unit members reported for work on the first scheduled day, but in the absence of an agreement Association members did not report for work on September 1, 1987. Association members have continued not to report for work. Since September 1, 1987, the parties have met with State Mediator Judith Rhode for 3 sessions but a comprehensive agreement was not reached. Bargaining has been characterized as "relatively smooth", through negotiations, the parties were able to resolve all issues except strike related items and the issues, submitted and discussed in this Report.

### ISSUES

There are nine (9) major outstanding issues which include proposals by both the District and the Association: They are as follows:

- |  |                       |
|--|-----------------------|
| 1. Article VII - TEACHING HOURS<br>7.2 (E) - Teacher Duty Time                   | -Association Proposal |
| 2. Article VIII - PROFESSIONAL<br>COMPENSATION -<br>8.4 - Salary Tracs - Credits | -Association Proposal |
| 3. Article X - LEAVES<br>10.1 Sick Leave Payout                                  | -Association Proposal |

4. Article X - LEAVES -District Proposal  
10.4 Extended Illness Leave
5. Article X - LEAVES -Association Proposal  
10.11 Sabbatical Leave Payment
6. Article XIV - GRIEVANCE PROCEDURE -Association Proposal  
14.B (c)(2)(e)(8) - Arbitrator's Authority  
(language clarification)
7. Article XVI - REDUCTION OF CERTIFIED PERSONNEL -District Proposal  
16.E - Qualifications
8. APPENDIX A - SALARY - STIPEND
9. CALENDAR - FIRST DAY - GRADE MARKING -Association Proposal

#### ISSUE 1

#### Article VII - TEACHING HOURS 7.2 (E) Teacher Duty Time

#### DISCUSSION

The Association proposes that teachers have duty time of 5 minutes before student class starting time and 5 minutes after student class dismissal time. This represents a reduction from the current 20 minute duty time for elementary and 9 - 12 teachers and 15 minutes duty time for middle school teachers. The Association argues that teachers, as professionals should be able to determine their own hours; each teacher has separate work habits that cause them to devote preparation time as needed for each situation. Further, most teachers currently put in more than the 15 or 20 minutes before or after class that the contract currently requires, but they shouldn't be subject to a strict rule. The Association's 5 minutes before and after proposal is offered on a 1 year trial basis; if either party determined it

was not successful the former 20/15 minute requirement would automatically be reinstated. The District is opposed to changing the current contract language.

#### RECOMMENDATION

It is recommended that teacher duty time be reduced to 10 minutes before and 10 minutes after student class starting and dismissal times. This shall be instituted for the first year of the contract. After the first year, if either party does not deem this reduction of teacher duty time to be successful, the current requirement of 20/15 minutes would automatically be reinstituted.

#### RATIONALE

Notwithstanding the individual needs and work habits of each teacher, the Association's proposal for teacher duty time of 5 minutes before and after class strikes me as too short. Conversely, the current requirement of 20 or 15 minutes strikes me as too long. The District's teachers being professional and conscientious employees should be given the opportunity to demonstrate that they are capable of maintaining a high level of service without being subjected to a rigid and perhaps inappropriate teacher duty schedule. Given an adequate opportunity, (1 year), to perform under a more reasonable teacher duty schedule, both parties should be able to ascertain whether education goals are being met. In the event the Board determines that the new program is not successful it can, in its discretion automatically revert to the prior schedule. If there is merit to the Association's argument, then it is left to its members to

substantiate that merit. If the District is correct in its concerns in opposing this change it will have the opportunity to revert to the former procedure. Both parties should be guided by good faith in implementing and practicing this modified recommendation.

## ISSUE 2

### Article VIII - PROFESSIONAL COMPENSATION

#### 8.4 Salary Tracs - Credits

#### DISCUSSION

The parties current agreement provides increased base salary of post degree college credits at "BA + 20", "MA + 15" and "MA + 30" levels. The Association proposes two additional 4% salary tracs at "MA 45" and "MA 60" levels. The District proposes an additional 3% salary trac at the P.H.D./E.E.D. level only. Apart from the two new salary tracs, the Association also proposes allowing its members to qualify for all post degree salary tracs by either earning or reporting course credits from a university or college or by earning or reporting "Professional Growth Credits" for participation in in-service training, workshops, conferences and the like. "Professional Growth Credits" would have equivalency value to college credits as determined by a equally represented joint District/Association Professional Growth Committee. The Committee would develop an equivalency schedule by Fall of 1988.

#### RECOMMENDATION

It is recommended that the District establish "MA 45"

and PHD/EED 4% salary tracs effective in the second year of the contract. The issue of "Professional Growth Credits" equivalency to college credits should be referred to a Professional Growth Committee to operate along the guidelines as proposed by the Association. In any event, credit should only be given for credits earned.

#### RATIONALE

Teachers who continue to demonstrate a willingness to continue their training and improve their abilities deserve recognition through increased compensation. The parties have already recognized this principle through the current system of post degree salary tracs. Instituting two (2) additional salary tracs for more advanced achievement reflects continuing support for this principle.

All credits recognized under the post degree salary tracs should be credits earned rather than reported. There is a vast difference between earning credits through achievement rather than monitoring a course. Accountability must be maintained whether it be in university courses or through in-service training seminars. This is an important factor that the Professional Growth Committee must take into consideration when determining equivalency of Professional Growth Credits.

With equal representation of both the District and the Association on the committee the parties must achieve a true meeting of the minds before any recognition is given for non college credits in post degree salary tracs. While the parties must commit themselves to utilize their best efforts to recognize

equivalency value in non college training programs for post degree salary tracs, neither party is required to make an agreement. A detailed study and discussion on specific types of courses and inservice training opportunities is better left to a Committee that can focus its energy solely on this issue rather than through the collective bargaining process.

### ISSUE 3

#### Article X - LEAVES

##### 10.1 Sick leave Accumulation Payout

#### DISCUSSION

Effective the first year of the contract the Association proposes 50% accumulated sick leave payout at \$1,000 maximum upon leaving prior to retirement, or a \$2,000 maximum payout upon leaving at retirement. The District concurs with the Association's sick leave payout position upon retirement but would not provide any payment for employees leaving prior to retirement.

#### RECOMMENDATION

It is recommended that upon termination of employment from the District, a teacher shall receive cash payment from the District equal to fifty (50%) percent of the current years salary value of one of his workdays times the number of his accumulated sick days with a \$2,000 maximum when leaving employment at retirement and a \$1,000 maximum leaving employment prior to retirement.

#### RATIONALE

The current contract lacks a monetary incentive not to



utilize sick days. The employee who is conscientious in his use of sick days receives the same monetary consideration received by the employee who has been liberal in his use of sick time. Upon termination they both receive nothing. Both parties apparently agree that the sick time program should provide some incentive to deter unnecessary use. While one can argue that sick time should only be used for its intended purpose and that it was never intended to provide additional compensation, realities of the work place led to the inescapable conclusion that an employee may have a greater tendency not to use sick time if an economic incentive is provided.

The District's position would limit that incentive only in the case of retirement, while the Association would also extend the incentive, at a reduced level, to all employment terminations. If there is merit in providing an economic incentive for not using sick time, it is not limited to the retirement situation. The District would benefit from less use of sick time irrespective of an employee's circumstance in leaving. Utilization of sick time ordinarily creates the additional expense of substitute personnel. If employees received monetary incentive not to utilize sick time, some of this expense could be avoided. Moreover, the education process could be better served through greater continuity of teachers.

ISSUE 4  
Article X - LEAVES  
10.4 Extended Illness Leave

DISCUSSION

Under the current contract, employees are permitted unpaid extended illness leave for up to three (3) years. The District proposes to reduce the maximum length of extended illness leave to two (2) years. The Association proposes to maintain the status quo with current contract language.

RECOMMENDATION

It is recommended that extended illness leave remain at the three (3) year maximum.

RATIONALE

Under extended illness leave employees retain their employment rights, and can not be terminated. Employees returning from this type of leave are assigned to their same position or substantially equivalent position, if available. An employee faced with the already difficult situation of a long term illness should not need to be faced with the added burden of employment termination, especially where there is no showing of harm to the District by retaining an employees employment right for three (3) years. There is no evidence that this three (3) year maximum period has caused the District any operating difficulties.

ISSUE 5  
Article X - LEAVES  
10.11 Sabbatical Leave Payment

DISCUSSION

Upon approval of the Superintendent, an employee on sabbatical leave currently receives 75% of his normal contractual salary. The Association proposes to increase sabbatical leave pay to 85% of normal contractual salary, while the District would maintain the status quo under the current contract.

RECOMMENDATION

It is recommended that sabbatical leave pay remain at 75% of normal contractual salary.

RATIONALE

Current sabbatical leave pay at 75% of normal contractual salary is already generous when comparing this benefit to other Districts. The Association candidly admits that at 85% the Waverly District would provide one of the highest sabbatical leave payments. While the Association argues that at 75% many employees, particularly those with families, may not be able to afford to take a sabbatical leave, that same argument is true for all Districts that provide even lower benefits or any benefit level that is not 100%. There has been no showing that employees needs in the District are so different as to justify even higher sabbatical leave pay. If 75% of salary does not provide adequate compensation, then an employee would be well advised to make other arrangements to supplement his finances.

ISSUE 6  
Article XIV - GRIEVANCE PROCEDURE  
14.3 (C)(2)(e)(8) Arbitrators Restrictions  
(Clarification)

DISCUSSION

An arbitrators authority under the current contract is limited in that the arbitrator has no power to rule on teacher "evaluations", Section 14 (c)(2)(e)(8). But under Section 14 (c)(2)(e)(5), a arbitrator has no power to rule on "any matter involving teacher evaluation, except as provided in this Agreement". (emphasis added) The Association submits that these two sections have an inherent contradiction. To clarify this contradiction, the Association proposes removing the words "and evaluation" from 14 (c)(2)(e)(8), thus limiting the arbitrators authority in teacher evaluations - "except as provided in this Agreement". (14 (c)(2)(e)(5)). The District proposes retaining the current contract language.

RECOMMENDATION

It is recommended that the word "and evaluation" be removed from Section 14 (c)(2)(e)(8).

RATIONALE

Collective bargaining offers the parties an opportunity to clarify ambiguous or contradictory contract language in their current agreement. If the parties previous contract language lends itself to an interpretation not intended by either party, the parties are generally well advised to clarify their language to prevent a third party from imposing a contrary result. Inclusion of the words "and evaluation" in

Section 14(c)(2)(e)(8) is confusing in view of the language in Section 14 (c)(2)(e)(5) which also prevents an arbitrator from ruling on teacher evaluations "except as provided in this Agreement", (emphasis added) Subsection 5 is more specific in that it provides for an exception while still generally eliminating an arbitrator's authority on evaluations. While specific language most often prevails over general language, it is still advisable for the parties to avail themselves of this opportunity and eliminate possible confusion by removing the words "and evaluation" from subsection 8.

ISSUE 7  
Article XVI - REDUCTION OF CERTIFIED PERSONNEL  
16.1 Qualifications

DISCUSSION

The District has proposed Section 16.1 (e) to read as follows:

E. Qualifications as used in the Master Agreement shall be defined as follows:

1. VALID MICHIGAN TEACHING CERTIFICATE.
2. (9-12)  
(CURRENT CONTRACT LANGUAGE)
3. K-8 Special Subjects:  
(CURRENT CONTRACT LANGUAGE)
4. ASSIGNMENTS TO SPECIAL EDUCATION SHALL REQUIRE A CERTIFICATE ENDORSEMENT APPROPRIATE TO THE PARTICULAR SPECIAL EDUCATION PROGRAM REQUIRED BY SPECIAL EDUCATION RULES SET FORTH BY THE STATE OF MICHIGAN.
5. ELEMENTARY TEACHERS SHALL BE QUALIFIED FOR ANY ASSIGNMENT IN GRADES K-6. THE ASSIGNMENT OF AN ELEMENTARY TEACHER IN GRADES 7-8 SHALL BE IN THE AREA OF THE TEACHER'S MAJOR OR MINOR FIELD OF

STUDY AS DOCUMENTED ON THE TEACHER'S TRANSCRIPT ON FILE WITH THE ADMINISTRATION. WAIVERS SHALL BE DETERMINED BY THE ADMINISTRATION.

6. THE ASSIGNMENT OF A SECONDARY TEACHER IN GRADES 7-8 SHALL REQUIRE A MAJOR OR MINOR AS DOCUMENTED ON THE TEACHER'S TRANSCRIPT ON FILE WITH THE ADMINISTRATION. WAIVERS SHALL BE DETERMINED BY THE ADMINISTRATION.
7. FOR PURPOSES OF SECTION 5 AND 6 ABOVE, A MINOR SHALL BE DEFINED AS TWENTY (20) SEMESTER HOURS. METHODS CLASSES SHALL BE EXCLUDED FOR PURPOSES OF DETERMINING MAJOR AND/OR MINORS UNLESS THEY ARE ACKNOWLEDGED AS SUCH BY THE DEPARTMENT OF EDUCATION.
8. TEACHERS SHALL HAVE SIXTY (60) CALENDAR DAYS AFTER THE CONTRACT IS RATIFIED TO FURNISH THE ADMINISTRATION WITH PROOF OR DOCUMENTATION OF THE AREAS THAT MAY CONSTITUTE A MAJOR OR MINOR NOT CURRENTLY LISTED ON THEIR CERTIFICATION.

The Association asserts that subsections 1 & 4 are superfluous in that including "certification" within qualifications is repetitive. The Association principal objections are directed at subsections 5, 6 and 7 which the Association contends are inconsistent with the team teaching Middle School Basic Block Program. Providing records as proposed by the District in subsection 8 is agreeable to the Association provided adequate time is given.

#### RECOMMENDATION

It is recommended that qualifications language as set forth in the current collective bargaining agreement section 16 (1)(e) remain unchanged except as to subsection 8 as proposed by the District.

#### RATIONALE

The difficulty with the Districts new proposal on

qualifications relates to elementary teacher assignments in grades 7 - 8 which would primarily require assignment in teachers major or minor field of study. Under current state certification rules, elementary teachers are certified to teach all "subjects kindergarten to 8th grade. High school teachers are also certified to teach all subjects in grades 7 and 8, In view of this broad certification range middle school teachers teach a variety of subjects. The District participates in a Middle School Basic Block Program which assigns a team of teachers (2 to 9 teachers) general education responsibility (mathematics, science, social studies and language arts) for a block of students. This team of teachers as among themselves decide which teacher will teach the various subjects within the team. These teachers are not limited to teaching in areas of their minor or major, the team teaching concept promotes diversity of teaching among the team.

The Districts proposal contradicts the team teaching concept by limiting assignment of 7 - 8th grade teachers to major and minor areas. The problem is especially acute for those elementary 7 - 8th grade teachers that do not have a major or a minor in a given area. It would follow that if the District is serious about this proposal, then a total revamping of the Middle School Basic Block Program would need to accompany it. In the absence of that revision, it appears that the District qualification proposal is not workable.

## ISSUE 8

### Appendix A - SALARY -

#### A. Salary

#### B. Stipend

#### A. Salary.

#### DISCUSSION

With respect to the base salary issue, the parties have negotiated and consistently exchanged proposals on a three-year package. At the time of the last mediation session, the Association's official proposal reflected base salary increases of 6.8% in 87-88, (first year), 7% in 88-89, (second year) and 7.2% in 89-90, (third year). The Board has proposed 4.5% in the first year, 6% in the second year and 4-8% in the third year, based on the increase in the District's SEV. While both parties have advocated a three-year contract, the Association has indicated that it is not diametrically opposed to a two-year agreement.

#### RECOMMENDATION

It is recommended that the parties adopt a two year contract for 1987-1988 (first year) and 1988-1989 (second year) school years. First year salary should be increased 6% over the 1986-87 Appendix A rates. Second year salaries should reflect an additional 6% increase over first year salaries.

#### RATIONALE

The Association's Exhibit 3 outlines tri-county area teacher salary settlements for 1987-88, 1988-89 and 1989-90. The



average increase for 1987-88 is 5.77%. Second year average increases are 5.96%. Information for the third year is too incomplete for any meaningful conclusion. According to the Association Exhibit 4, the District currently ranks sixth in Masters Maximum Salary Levels among the ten highest Districts in the tri-county area. The District has maintained its sixth position for at least the past four years. Utilizing the same methodology outlined in the Association Exhibit 4, a 6% increase in the first year would permit the District's teachers to maintain its relative salary position with other Districts in the tri-county area. A 6% increase would place Waverly in sixth position, approximately \$100.00 above 7th position Okemos. This is almost identical to the District's 86-87 position. On the other hand, a 4.5% increase would cause Waverly to drop to 7th place and fall approximately \$400.00 below Okemos. When examining its financial status there does not appear to be justification for the District to drop in its relative ranking position among other tri-county area districts.

With an operating millage rate of 31 mills for the 1987-1988 school year, the District enjoys the third lowest operating millage levy among the 24 tri-county area districts. (Association Exhibit 6). On June 30, 1987 the District reported a General Fund Balance of \$801,927. (Association Exhibit 2) The amount of the District's current operating expense that is spent on instructional salaries is the lowest of all 24 tri-county area school districts. (Association Exhibit 8). The District continues to spend an increasingly lower percent of expenditures

on classroom teacher salaries. (Association Exhibit 5) In addition, the District has the second highest expenditure per pupil for administrative salaries. (Association Exhibit 7)

Not surprisingly, the District has not claimed inability to pay the Associations base salary demands. It is not a question of resources, it is a question of allocating current resources to classroom teacher salaries, rather than to other areas such as administrative salaries. With the current teacher shortage and with increased shortages in the immediate horizon the District would be well advised to maintain its relatively favorable salary ranking among other area districts to attract and retain qualified teachers. This is particularly true where inability to pay does not come into serious question.

The second year increase of 6% is supported by the average settlement among tri-county area districts. (5.96%) (Association Exhibit 3) It would permit the Association to retain its relative ranking among those districts (Association Exhibit 4) and is consistent with both parties most recent bargaining proposals. On the second year there should be debate.

The third year of the contract as discussed by the parties during negotiations, does not lend itself to resolution at this time. The District does not desire to commit itself 2 years from now with the uncertainty of its SEV increase. The Association also does not desire to commit itself to an uncertain increase, even though a 4% minimum is guaranteed. The Association argues that the District with its relatively low operating millage rate has substantial room for a millage

increase in the event SEV does not increase sufficiently to cover expenses occasioned by its third year salary demand. Even without a millage increase the Association effectively argues that its demands could be met through allocation of available resources.

Despite these arguments, one point is abundantly clear, neither party desires to commit its financial future to the uncertainty of events occurring 2 years from now. Given the Districts prior history of 2 year contracts it would appear reasonable not to require either party to commit to such uncertainty. Instead the parties should be left to negotiate for the 1989-90 school year at a time when both the District and the Association will have more up to date data on its financial status and financial needs.

#### B. Stipend

#### DISCUSSION

The current Agreement provides for a stipend based upon longevity at steps of \$250, \$400 and \$650. The Association proposes for the first year an increase to \$400, \$650 and \$1,050. The District proposes an increase in the third year (1989-90) of \$350, \$600 and \$800. Neither party proposes any change in the experience qualification for each step.

#### RECOMMENDATION

It is recommended that the stipend be increased to \$350, \$600 and \$800 as proposed by the District, but effective in the second year of the contract (1989-90).

## RATIONALE

Through their respective proposals, both parties acknowledge the need to increase the stipend. The Districts stipend proposal represents substantial increases for experienced employees and is a generous offer. The Associations proposal provides for even higher increases but lacks any specific justification. Given other recommendations contained in this report, it is appropriate to delay imposition of the District stipend increase until the last year of the contract, which as previously recommended is the 1988-89 school year.

## ISSUE 9

### Article IX - CALENDAR

#### FIRST DAY - GRADE MARKING

## DISCUSSION

The Association proposes school calendar adjustments to permit (1) a half day of preparation on the first day of instruction, and (2) an additional half day for report card marking at the Middle School. The District proposes to retain the current calendar except for scheduling of 3 Elementary School half day grade markings on dates by mutual agreement.

## RECOMMENDATION

It is recommended that the school calendar be adjusted to include a half day of teacher preparation on the first day of instruction and 3 half day report card markings at the Elementary and Middle School to be rescheduled by mutual determination.

## DISCUSSION

The first day of school generally requires substantial adjustment for both students and teachers. Generally speaking the first day does not include normal instruction, rather it is a time for introduction and resolution of first day problems. Students and teachers alike require reasonable opportunity to attend to the circumstances presented at the first day of class. For students this may include schedule adjustments, obtaining books and supplies, for teachers this may include room changes, special equipment and overload adjustments. If teachers and students are given this opportunity to immediately attend to special first day problems, lingering problems are may be minimized.

All levels, except the Middle School, are currently afforded three half grade marking days. Middle School teachers are given two half days for three grade marking periods. Given the significant student load and requirement of program reports in between grade markings, there does not appear to be any justification for affording Middle School teachers less grade marking time. As compared to Elementary School teachers the current Middle School teachers inequity is more pronounced insofar as Elementary School teachers are not required to send program reports in between grade markings. The scheduling of grade marking half days for Elementary and Middle School teachers by mutual agreement would also appear to best serve all parties needs.

CONCLUSION

Although the District has chosen not to participate in the Fact Finding proceedings, I hope that these recommendations will help the parties resolve their differences.

Respectfully submitted,



MARC G. WHITEFIELD  
Fact Finder  
20300 West Twelve Mile Road  
Suite 200  
Southfield, Michigan 48076  
(313) 356-4900

Dated: September 18, 1987

# *Waverly Community Schools*

515 Snow Road

Lansing, Michigan 48917

Telephone (313) 321-7265

September 9, 1987

Mr. Shlomo Sperka, Director  
Bureau of Employment Relations  
State of Michigan Plaza Building  
14th Floor, 1200 Sixth Avenue  
Detroit, Michigan 48226

Dear Mr. Sperka:

On Monday, September 7, 1987, we were initially contacted by telephone by Mr. Amar who advised us that the Commission had determined that fact-finding was necessary in the dispute now existing between the WEA and the District. Later that day, we were again contacted by Mr. Amar advising us of three persons selected by the Commission as potential fact-finders and asking that we strike one. We objected to this process and to fact-finding. Mr. Amar suggested that we write you. Subsequently, on September 8, 1987, we were advised that a fact-finding hearing was scheduled for 1:00 p.m. on September 10, 1987.

We are unaware that an application for fact-finding has been filed, not having been served with such an application. Not having been served, we are unaware of the basis for such an application and, therefore, cannot respond to any allegations which it may contain.

Further, assuming that an application has been filed, we are unaware that the Commission has met in open session to conduct a hearing prior to a determination that fact-finding is necessary.

Finally, we have been served with no Order of the Commission setting forth either its findings of fact or its Order that fact-finding take place.

We believe that these omissions and deficiencies are a denial of due process, both procedurally and substantively and that the Commission's proceedings to date are outside the scope of its authority.

We also believe that fact finding is inappropriate for the following reasons:

Mr. Shlomo Sperka, Director  
Bureau of Employment Relations  
September 9, 1987  
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(a) Notwithstanding extended good faith negotiations, the members of the WEA have engaged in and continue to engage in a strike.

(b) Neither the WEA nor the District are an applicant for fact-finding. Obviously, neither the WEA nor the District are of the judgment that fact-finding is necessary or that it will be beneficial. To the contrary, the absence of such an application by either the WEA or the District indicates their judgment to the contrary.

(c) The community within which the District operates has been continuously kept abreast of the facts. Therefore, requiring additional expense and time commitment is unnecessary and detrimental to the District.

(d) The Commission has not disclosed the facts upon which it has based its verbally communicated decision that fact-finding is necessary, has not disclosed the source of those facts and has not provided the District with an opportunity either to hear and cross-examine witnesses or to present evidence that fact-finding is inappropriate. In fact, as mentioned above, the District has not seen an application. On Saturday, the mediator assigned to the negotiations advised us that she was going to apply.

(e) Most importantly, there are no disputes regarding the facts as they relate to the remaining issues, the most significant of which is allocation of the District's financial resources. As you are aware, the responsibility for the operation of the District rests with the Board. Notwithstanding the opinion of a fact-finder, the final assessment of the needs of the District must be and will be decided by the Board with the assistance of the community.

We respectfully request that the Commission withdraw, that fact-finding not take place, and that the parties be allowed to resolve their differences within their own community without the interjection of an outside agency.

Because there are no facts in dispute, because fact-finding will further deplete the resources of the District and because



Mr. Shlomo Sperka, Director  
Bureau of Employment Relations  
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the ultimate responsibility is within our community, should the Commission disregard our request, we respectfully decline to participate.

Sincerely,

WAVERLY COMMUNITY SCHOOLS  
BOARD OF EDUCATION

By: \_\_\_\_\_  
Gary Mielock, President

By: \_\_\_\_\_  
Susan S. Bolhouse, Secretary