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In the Matter of
The Fact Finding Hearing
Concerning Outstanding Issues
Between the
Deckerville Board of Education
and the
Tri-County Bargaining Association/MEA/NEA
M.E.R.C. Case No: D83 G-790

FACT FINDER'S REPORT AND RECOMMENDATION

Deckerville Board of Education

I. INTRODUCTION

On March 27, 1984, Director Shlomo Sperka appointed the undersigned as the Department of Labor's Fact Finder and Agent to conduct a Fact Finding Hearing pursuant to Section 25 of Act 176 of the Public Acts of 1939, as amended, and the Commission's regulations and to issue a report with recommendations with respect to the matters in disagreement between the Deckerville Board of Education and the Tri-County Bargaining Association. The undersigned met with the parties on May 14, 1984, for the purpose of exploring the issues in dispute and for the additional purpose of attempting to resolve as many issues as possible prior to the actual Fact Finding Hearings. The parties resolved a number of the issues, however, they were not able to resolve all of the issues in dispute. Accordingly hearings were scheduled in the Offices of the Deckerville Board of Education on June 21, 1984, and on July 11, 1984. Each of the parties were given the opportunity to present any evidence in terms of either oral testimony or exhibits which it felt to be relevant with regard to the issues in dispute.

The background evidence indicates that the Deckerville Community Schools is one of seven K-12 districts located in Sanilac County, Michigan. The seven districts include Croswell-Lexington, Marlette, Sandusky, Brown City, Deckerville, Carsonville-Port Sanilac, and Peck. The students within each of the seven K-12 districts vary in population from a low of 601 in the Peck school district to a high of 2316 in Croswell-Lexington. Deckerville has approximately 982 students.

The Deckerville Board of Education and the Tri-County Bargaining Association have been parties to collective bargaining agreements for a number of years. In 1980, the parties negotiated a three year agreement which included wage increases of ten percent

for each of the fiscal years commencing on July 1, 1981, and terminating on June 30, 1983. The parties attempted to reach an agreement for the 1983 - 1984 school year. However, after many months of bargaining the parties were unable to reach an agreement. The parties availed themselves of the services of the State Mediation Service and still were unable to reach an agreement, at which time it was determined that the parties were at impasse. At that point in time the parties requested the appointment of a fact finder pursuant to the provisions of Section 25 of Act 176 of the Public Acts of 1939, as amended. The request as previously noted was granted on March 27, 1984. The parties have stipulated that they would be willing to be bound by the provisions of a three year Collective Bargaining Agreement. The parties have further stipulated that the prior Collective Bargaining Agreement shall remain in full force and effect, except as to those provisions which have either been modified by mutual consent of the parties or those provisions which may be modified as a result of the parties acceptance of the Fact Finder's recommendations.

II. ISSUES IN DISPUTE

A. Post School Day Time - Article 11(b). The current language provides:

"No teacher shall be required to report for duty earlier than fifteen minutes before the opening of the pupils' regular school day in the morning. Teachers shall be permitted to leave fifteen minutes after the pupils. Teachers are encouraged to remain for a sufficient period after the close of the pupils' school day to attend to those matters which properly require attention at time, including consultations with the parents when scheduled directly with the teacher, except on Fridays and days preceding holidays when the teacher may leave five minutes after the buses have left the parking lot."

The Board of Education has proposed to replace the word "encouraged" with the word "required". The rationale of the Board of Education is based upon the fact that although they admit that monitoring the teachers to assure that they stay would be a difficult task. Nevertheless, due to a number of parental complaints the Board feels that it must have the authority to require as opposed to encourage teachers to remain after school for the purpose of meeting parents. The Board further takes the position that in the past teachers have not impressed parents of students with their willingness to remain for a sufficient amount of time to take care of those matters requiring their attention. Thus the Board concludes that by substituting the word required for the word encourage the situation would be alleviated.

The testimony of the Board's witnesses indicated that they did not believe that the language change would eliminate the possibility of a teacher failing to remain. As a matter of fact the Board indicated that realistically the provision probably could not be enforced but nevertheless the Board felt that it was part of a teacher's professional responsibility to remain for the purpose of engaging in discussions and consultations with parents. The Board indicated that the normal school day ends at 3:12 p.m. and teachers currently remain until approximately 3:27 p.m. While the Board did not place a time limit upon the teachers with regard to how long they would have to remain if the Board's proposal were to be accepted, nevertheless the Board indicated that the teachers would be expected to remain a reasonable length of time but that the Board did not envision that such a wait would be for an hour or more. The Board further indicated that teachers would not be compensated for the additional time spent engaging in parental consultations.

The Association took the position that the language should be retained from the prior Collective Bargaining Agreement. The Association points out that the current language has been in effect for at least one decade. It further points out that to change the language would open a Pandora's box with regard to new contract interpretation problems based upon the fact that the language lacks specificity in terms of the time frame, type of activity, frequency, et cetera associated with teachers remaining after school. Further, the Association points out that the change would allow individual administrators to place individual interpretations upon the language with regard to the length of stay required of the teacher. The Association further points out that the entire problem arose as a result of one incident occurring, wherein a teacher refused to remain thus causing a parent to complain to the Board of Education. The Association further points out that the one incident in question did not result in either a thorough examination of the incident nor was any attempt made to discipline the teacher involved for dereliction of duty, nor was any attempt to follow-up on the situation made to see whether or not there were any recurring problems.

In response to the Association's position, the Board of Education indicated that while it was true that only one incident came to the attention of the Board nevertheless the Board felt that there were undoubtedly a larger number of incidents but that parents were reluctant to file complaints due to the fear of teachers reacting and taking it out on their children by way of reprisal.

Based upon the exhibits and evidenced introduced, it is my recommendation that the current language of the Collective Bargaining Agreement be maintained. I do not feel that one isolated incident over a decade requires a change of the sort proposed by the Board of Education.

The Association has correctly pointed out that the Board of Education proposal is an open ended proposal leading to possible new interpretations of that language as well as creating ambiguities whereby individual administrators could place their own interpretation upon that provision of the agreement. Further, I am concerned that the proposal is open ended in nature. While the Board of Education representative indicated that teachers would not be expected to remain for periods of an hour after school, the proposal does not limit the period of time within which a teacher would be required to remain. It would appear that teachers have in fact fulfilled their professional responsibilities by remaining for the purpose of consulting with parents in the past. Should a teacher fail to fulfill that responsibility the Board of Education has an adequate process through its disciplinary procedures in order to assure that the teacher does in fact comply with his or her responsibilities in terms of meeting with parents who are not able to meet at any other time. Accordingly as hereinabove noted it is my recommendation that the status quo be maintained.

B. Study Halls - Article 11(m). The language of the prior agreement reads as follows:

"Teachers may be asked to substitute during their planning periods, provided that all reasonable efforts to secure a substitute have been exhausted. The rate of pay shall be Eight (\$8.00) Dollars per hour for 1980 - 1981 and 1981 - 1982, and Nine (\$9.00) Dollars per hour for 1982 - 1983. Substitute shall mean:

1. Substituting for another teacher during one's preparation period.
2. Supervising another teacher's students when sent to your classroom."

The Board of Education has proposed that a clarification of the phrase supervising another teacher's students when sent to your

classroom be inserted into the Collective Bargaining Agreement. The clarification would state:

"A study hall shall not be considered a classroom."

The rationale of the Board of Education is based upon the fact that in the prior year a teacher had left one hour early and sent her students to an existing study hall. The supervising teacher of the study hall then asked to be paid an additional \$9.00 pursuant to the provisions of Article 11(m). The Board of Education points out that no teaching was involved. It was merely a matter of additional students being sent to a study hall as a result of a teacher having to leave school early. The Board of Education indicates that it wants a clarification of what they believe to be an existing past practice that where a teacher does not actually perform any extra duties the teacher does not receive any extra pay. The evidence indicates that normally anywhere from fifteen to ninety-seven students may be housed in a study hall. The study hall is housed in the cafeteria. The teacher in charge of the study hall is responsible for discipline and to maintain an atmosphere for either learning or studying. The teacher further, if qualified, should attempt to help any students who require aid. Apparently due to a number of teachers fulfilling duties both as a teacher and a coach when teams are required to leave the school and the teacher performs his or her coaching duties the teacher's classroom students are transferred to the study hall.

The Board of Education has indicated that it believes that supervising students in a study hall is dramatically and essentially

different from teaching students in a classroom. The Board of Education further points out that it believes that the past practice on the issue should prevail. The past practice was to consider a study hall as being separate and distinct from the classroom and accordingly not covered by the language of Article 11(m) calling for additional compensation.

The Association proposes to maintain the status quo. The Association indicates that even though it admits study halls are not conducted in the same format as academic courses nevertheless the assigned teacher is expected, on occasion, to perform teaching duties. The Association points out that individual instruction, maintenance of discipline in an ongoing atmosphere conducive to learning are responsibilities of the study hall teacher. The Association's rationale further is based upon the premise that it believes the Board is seeking to turn the study halls into a holding pen for displaced students.

The Association further points out that study hall time is counted toward meeting the Michigan Department of Education requirements of 900 hours of instruction. Thus the Association concludes that Michigan law views study hall time as teaching time as opposed to merely overseeing students during a non-classroom period of time in setting.

It would appear that the Association is somewhat playing the role of the proverbial ostrich. The Association is well aware of the fact that a grievance has been filed which alleges that a teacher is entitled to an additional stipend for having had additional students placed in a study hall. The Association further is well aware of the fact that the Board of Education has taken the position that the past practice clearly runs contrary to the grievance. Further, the grievant in that case agreed to be bound by the outcome of the Collective

Bargaining process. The status quo insofar as the language is concerned would not resolve the grievance. Nor, based upon the difference between the parties, would it resolve future incidents without one party or the other agreeing in the future to be bound by a possible arbitration decision on the pending grievance. It seems clear that the current language does not in and of itself resolve the grievance. It is possible that the past practice as alleged by the Board of Education would resolve the grievance. It should be noted that no witness for the Association contradicted the testimony of the witness of the Board of Education with regard to the past practice. Furthermore, it seems to me, that the position taken by the Association is not well-founded. I believe that the distinction between a study hall and a classroom is real and considerable. While on occasion a teacher may be called upon by a student to give some minor form of aid with regard to a particular problem, the teachers in the study hall do not normally perform the type of instruction that is expected of a classroom teacher. The instruction performed in a study hall is incidental in nature. Moreover it is at best sporadic and of a very minor and limited duration. In addition the position taken by the Association would create an inconsistency. A study hall might, on a regular and recurring basis, have as many as seventy-five students in it. Another study hall on a regular and recurring basis might only have twenty-five or fifty students in it. Thus can it be said that the teacher charged with the responsibility of maintaining decorum in the study hall which regularly has seventy-five students is performing any less than a teacher who normally only has twenty-five or fifty students in a study hall but who on a rare occasion is required to maintain decorum over an additional fifteen or twenty students as a result of the absence of a regular classroom teacher.

I believe that the position taken by the Board of Education is a reasonable one and would resolve the current pending grievance as well as any questions in the future with regard to the question of whether or not additional pay shall be given to a teacher when the teacher is required to have additional students in the study hall. Moreover, the current language of the Collective Bargaining Agreement clearly, to me, seems to imply that it is the classroom setting, not the study hall setting, wherein a teacher should be compensated over and above the teacher's normal rate of pay.

Accordingly for all of the above-stated reasons, it is my recommendation that the proposal of the Board of Education with regard to the issue of study halls, be accepted.

C. Class Size - Article 11(n). Currently there is no language with relation to either minimum or maximum class sizes in the Collective Bargaining Agreement. The Association has proposed new language which would require that a pupil/teacher ratio be maintained. The ratio would vary based upon either the grade or the nature of the class being taught. For example, the Association proposes a maximum of twenty-six students in kindergarten and grades 1, 2 and 3 and a maximum of thirty-two students in grades 4 through 6. With regard to specific subjects, the Association proposes a maximum of twenty-five students in such subjects as industrial arts, vocational shops, home-making, art, office practice and drafting and a maximum of thirty students in English, social studies, mathematics, science and foreign languages and a maximum of thirty-two students in typing, and a maximum of forty students in physical education and a maximum of twenty-seven in the laboratory/science classes. The Association further proposes

language covering special need students in hearing impaired, vision impaired, physically or otherwise impaired, severe emotionally imparied, emotionally impaired and educable mentally impaired. In addition the Association language would provide for a variance of up to ten percent if necessary.

The rationale of the Association is based upon the following facts. Class size has long been recognized as a bargainable working condition. The Association further maintains that controlled class sizes provides continuity of work load for teachers, guarantees equitable distribution of work load among the staff and provides a teacher with the ability to maintain a reasonable teaching atmosphere in his/her work place.

The Association further maintains that the Board of Education has gradually been increasing the size of classes. It further points out that most of the other districts in Sanilac County have language concerning the size of classes.

In response the Board of Education has taken the position that the status quo should be maintained. That is to say that no language should be inserted into the Collective Bargaining Agreement regarding class size. In support of its position the Board of Education points out that the ratio of pupils to teachers has remained fairly constant over the past several years. For example, in 1978 - 1979, the classroom pupil/teacher ratio was 20.87 to 1. In 1981 - 1982, the ratio was 23.96 to 1, but in 1983 - 1984, it dropped to 22.12 to 1. It further points out that while the kindergarten pupil/teacher ratio has increased from 38.5 to 1 to a high of 43.5 to 1, it currently is 41.0 to 1. Moreover, these are split classes, meaning that only half of the students in the kindergarten attend in the morning and half in the afternoon.

Thus the ratio of 41 to 1 actually is 20.5 students in the morning and 20.5 students in the afternoon. The Board further questions the comparable communities used by the Association insofar as mandatory requirements are concerned. For example, in Brown City the language provides for a committee to meet after the fourth Friday of the school year. The committee discusses class size and makes recommendations to the superintendent of schools. The language further provides that the superintendent is required to report back to the committee within three weeks after the meeting of the committee and the submission of the committee's recommendations. The language then provides that the class size committee will discuss classes with more than thirty students upon the written request of the Union. However, there does not appear to be any language in Brown City which requires the Board of Education to maintain class sizes of thirty or less students. The Croswell-Lexington School District Collective Bargaining Agreement does contain language recognizing certain maximums. The maximums are virtually identical to those proposed by the Association in Deckerville. The language further provides that in the event the enrollment exceeds the maximum numbers, the teacher may invoke the grievance policy of the Contract. The language further provides that in the event maximums are exceeded a teacher is compensated an additional \$50.00 per student over and above the maximum number of students per semester. The Marlette Contract contains language and class size requirements. However, it would appear that those merely represent goals and not mandatory requirements since the language specifies that the parties agree that class size should be lowered wherever possible to meet those standards. The Sandusky agreement also contains class size requirements plus a ten percent override. The same appears to be true of Carsonville-Port Sanilac.

The Association in support of its proposal states that class sizes are an important consideration as a working condition. Further, there can be no dispute that more students equate to more work. Much of the work is directly proportional to the number of students as for example, with the number of papers to be corrected and records to be kept. This may also be true with regard to the disciplining of students and the stress placed upon a teacher. Further, the Association points out that by maintaining class size ratios an equitable situation occurs with regard to the distribution of students among the various teachers. The Association further believed that its exhibits indicated that an undesirable trend was occurring wherein the number of students in the classrooms in Deckerville was constantly being increased. The Association believes that the number of students has increased on the average by approximately five based upon the class size data furnished by the State Department of Education as reflected in the data tapes furnished to the Research Office of the MEA. The Association further points out that the information contained in the data tapes is that information which is reported to the state by the Deckerville school district. The Association disputes the Deckerville exhibit which contradicted the Association position on class size and which did not reflect the same data as the Association exhibits and the information submitted to the State of Michigan. The Association believes that the discrepancy is accounted for by the fact that the Board's information does not include special education students and teachers, but does include librarians and counselors. In addition the Association points out that it is not certain whether or not the Board's ratios include various categories of compensatory education, vocational education, industrial arts, adult education and other specialized areas. The Association

further points out that the comparable school districts within Sanilac County in virtually every instance contain class size provisions.

The Board of Education in support of its position that class size language should not be inserted into the Collective Bargaining Agreement states that the official figures of the district show that there has not been an alarming increase in the size of the classroom teacher/pupil ratio. It maintains that the increase has only been from 20.87 students to 22.12 students. Accordingly the Board concludes that the classroom teacher/pupil ratio in Deckerville is less than that proposed by the Association. The Board further points out that based upon the discrepancy in figures between those of the Association and those of the Board, the Association was invited to review the actual fourth Friday count figures in the Board offices but that the Association did not avail itself of the opportunity to check the numbers. Thus the Board concludes that there is no dangerous trend with regard to an increase in class size. The Board further points out that the language as proposed by the Association is more restricted than that contained in the comparable area agreements. Thus the Board concludes the facts do not justify or warrant the inclusion of any class size language in the agreement.

It would appear to be a truism that a student in terms of quality education will receive a better education in a smaller classroom setting. Obviously the teacher has more time to devote on an individual basis to each student when there are only twenty students in the teacher's classroom as opposed to a classroom containing thirty or forty students. Thus in and of itself a proposal to limit the size of classes is beneficial to both the student population and the individual teachers. However, by limiting the size of classes, it is also true that the

number of teachers must necessarily be increased. This can represent a substantial increase in cost to a Board of Education. Nevertheless that cost may on occasion have to be borne when a Board of Education allows its ratio of pupils to teachers to get out of hand. In the instant case it would not appear that at the current time the Deckerville Board of Education has increased the classroom teacher/pupil ratio to a point where the students can no longer be expected to receive a quality education. Even if one were to accept the Association evidence as set forth in Exhibit 1 as being totally and factually correct the current classroom pupil/teacher ratio is only 25.64 to 1 for students beyond the kindergarten level and in actuality only 22 to 1 for kindergarten students who only spend a half a day in school. The Association proposals would allow classes of approximately twenty-five students in most subjects and twenty-six students in kindergarten through 3 and thirty-two students in grades 4 through 6. In addition the Association proposal would allow for a ten percent override in each of those classes thus providing for an additional three students in those classes. In reality the Association proposal would allow the Deckerville Board of Education to increase the class sizes over and above those which were maintained according to the Association exhibits in prior years and certainly far above the levels set forth in the Board exhibits which only indicate an average of 22.12 students in the 1983 - 1984 school year per classroom teacher and an average of 20.5 students in kindergarten. In addition the Board has correctly pointed out that many of the comparables relied on by the Association are not mandatory in nature. That is to say the language may set certain levels of classroom size but the language in and of itself is not mandatory. Some of the language appears to at best be a goal toward which the parties should strive. But, no sanctions are set forth in the event that those goals are not reached. In other

instances if the size of the individual classroom is exceeded the Board may do so based upon a penalty payment to the individual teacher. While this may well enhance the teacher's bank account it says little and does little for the proposition that the parties are interested in maintaining the best possible quality education. Giving a teacher an extra \$50.00 per student will not enhance the quality of the education received by the individual student.

Accordingly based upon the fact that the teacher/pupil classroom ratio in Deckerville is well within the limits as proposed by the Association and based further upon the fact that the Board of Education does not seem to have abused the reasonable levels to be expected with regard to the concept of a ratio between teachers and students it is my recommendation that the Association proposal be denied and that no language be inserted in the Collective Bargaining Agreement requiring a classroom teacher/pupil ratio. It should be noted, however, that if in the future the Board of Education abuses its discretion with regard to a reasonable ratio of students in the classroom, then the parties should reconsider their positions. That is to say that in the event that the levels are increased beyond those standards which prevail throughout the area and beyond those standards which would insure a quality education to each and every student then in future Collective Bargaining Agreements it may become necessary to insert language concerning the size of classrooms and mandatory requirements insofar as teacher/pupil ratios are concerned.

D. Unused Sick Days - Article 14(a.2). The Association has proposed to increase the compensation for unused sick leave to \$25.00 per day with no limit on the accumulation of the number of sick days. Currently the compensation is in the sum of \$10.00 per day with no limit on accumulation. The rationale of the Association is based upon the

fact that the proposal would encourage teachers to save sick leave while providing a minimal separation payment. According to the Association such provisions discourage sick leave abuse and provide incentive to minimize absenteeism. There was no current data available according to the Association on the average number of sick days banked. The Association pointed out that the \$10.00 per day figure was the original figure and has not changed over a substantial number of years. The parties did not seem to know exactly when the figure was first arrived at but they were sure that the figure has been in existence at least since the 1973 Collective Bargaining Agreement. The Association position further would require the payment of the sick bank monies after a teacher had been in the system for a period of five consecutive years. The current language requires the teacher to be in the system for a period of ten consecutive years. The Association points out that the provision does not act as an early retirement incentive nor as a severance payment. It is purely from the Association's point of view a monetary enticement utilized for the purpose of inducing teachers not to use sick days when they are not confined to bed by an illness. Thus the Association believes that the language actually saves the school district money by inducing teachers to come to school thus saving the school district substitute teacher payments. The Association points out that as a result of the inflationary trend the \$10.00 figure utilized in 1973 no longer represents an equitable percentage of a teacher's salary, nor does it represent an equitable percentage of the savings realized by the Board of Education in terms of not having to hire a substitute. The Association further points out that in its opinion the \$15.00 offered by the Board of Education is inadequate to offset the reduction in value based upon the inflationary trend. The Association in support

of its contention that the time should be reduced from ten years of service to five years of service states that the ten year service requirement is discriminatory upon those teachers who move to Deckerville in the last years of their career in order to gain the needed few years for purposes of completing the eligibility requirements under the Michigan Public School Employees Retirement system. The Association acknowledges that its proposal does not totally eliminate the possibility of discrimination but nevertheless the Association feels that it provides a reasonable balance between allegiance to Deckerville in consideration to those teachers wishing to retire at the earliest date possible.

The evidence indicates that the teachers currently receive \$10.00 per day of accumulated sick leave at the time that the teacher leaves the school system, provided the teacher has had ten consecutive years or more of service. Each teacher receives eleven days of sick leave per year. In Croswell-Lexington the teachers receive \$15.00 per day of unused sick leave, after ten years of service without a cap on the number of days for which the teacher can receive the payment. In Sandusky the same ten year requirement prevails however, teachers for the 1984 - 1985 school year will only receive \$11.00 per day with a maximum of \$2,000.00 and in 1985 - 1986 teachers will receive \$13.00 per day with a maximum of \$2,250.00.

The Board of Education did not introduce any testimony or exhibits with regard to this issue. However, in its Brief, the Board of Education has taken the position that the request of the Union to increase the figure to the sum of \$25.00 is unreasonable. The Board of Education has proposed to increase the figure to the sum of \$15.00. The Board of Education points out that the Union has failed to introduce

any exhibits indicating that any school district within the area receives more than that being proposed by the Board of Education.

The Board of Education submitted no testimony nor did it submit any exhibits nor make any statement with regard the Union proposal to reduce the number of years involved in the pay-off.

It would seem that the position taken by the Board of Education with regard to increasing the sum of money to \$15.00 is reasonable. That represents an increase of fifty percent. Thus even though no increases may have taken place over the prior ten years, the current increase would in effect average five percent per year for the past ten years in terms of increasing the amount of sick pay for a teacher who leaves the system. Moreover, there is no cap on the amount of days a teacher could accumulate. Thus a teacher who saves all of his or her days could accumulate three hundred or more days during a normal career. This would result in a pay out at the time of retirement or separation in the sum of \$4,500.00. In the past the teacher would only have received the sum of \$3,000.00. In addition, the Association has not introduced any exhibits indicating that the requirement of ten years of service has been reduced in any of the area school districts.

Accordingly it is my recommendation that the language of the current contract be maintained with the exception of increasing the figure from the sum of \$10.00 to \$15.00.

E. Sick Leave Bank - Article 14(a.9). There is no language creating a sick leave bank in the current Collective Bargaining Agreement. The Association has proposed new language which would provide:

"All teachers will donate two of their personal illness days to the sick leave bank. These days will be added to eighty days donated by the Board to this bank. Any teacher who has exhausted their sick leave days may request to borrow days from the bank. The bank will be

administered by a six member board. The Superintendent, two building Principals and three Association members appointed by the President of the D.E.A.

Each request will be handled separately with a majority vote of the six members constituting a decision. The Board agrees to maintain in the bank a minimum of one hundred days."

The position of the Association is that a sick leave bank of the type set forth hereinabove would allow disabled teachers to draw upon the bank when they have exhausted their own supply of sick leave days. Further, the Association argues that such a bank would cause a minimum of liability to the district. Although the proposal does not provide for additional assessments against individual teachers the Association has set forth in its Brief that it would be amenable to assessing additional days if a disabled teacher was unable to repay the bank because of an inability to return to work. The Association further indicates it is willing to define criteria for the determination of eligibility for the use of the sick leave bank as well as a definition of waiting periods and/or maximum use of the bank. The Association finally states that based upon exhibits introduced in the hearing the concept of a sick leave bank is not unusual in Sanilac County.

The Board in opposition to the Association proposal states that the idea of a sick leave bank of the type proposed by the Association constitutes a novel idea in Sanilac County. The Board further maintains that the facts submitted by the Association in support of its position are less than persuasive. Finally the Board in its Brief points out the fact that the exhibits from other school districts within the County do not contain the type of proposal as set forth by the Association.

The Association initially maintained that the initial funding

of the bank should be based upon each teacher donating two days and the Board contributing eighty days for a total of one hundred and sixty-eight days. The Association further maintained that there would be no additional donation of days by teachers and that the Board in the future always be required to maintain the bank at a minimum of one hundred days. In addition the Association indicated that teachers who terminate their employment owing the bank days would suffer no additional penalties.

The language submitted by the Association from the Crowell-Lexington school district indicates that each teacher contributed one sick day to a bank. It further allowed teachers to request up to a maximum of fifteen days usage from the bank for reasons of extended illness which required hospitalization. It further requires medical verification. Moreover, it requires the repayment of the days borrowed from the bank at a rate of a minimum of three days per year. That contractual provision did not provide for the contribution by the Board of any sick leave days.

The Sandusky school district exhibit introduced by the Association indicates that teachers may voluntarily donate days in an emergency situation in which a fellow teacher has been disabled through illness or injury requiring hospitalization or home recuperation. It further provides that a formal request must be filed with the Superintendent's office effective on the second day after available sick days have been exhausted. Each teacher may contribute up to five days. However, the teacher receiving the sick leave days may not request more days than those for which the teacher is actually disabled.

The current Collective Bargaining Agreement allows teachers to accumulate in an unlimited manner sick leave time at the rate of

eleven days per year. Thus a teacher with ten years of service could accumulate up to one hundred and ten days of sick leave. Those days are received by the teachers without costs. It would thus appear to represent a double charge to the district to on the one hand require them contractually to give each teacher a set number of days per year for the use of sick time and on the other hand require the same school district to establish a bank and to donate additional days to that bank at an additional cost to the school district. On the other hand, where there is a voluntary contribution of time as exists in Croswell-Lexington and Sandusky, and there is no requirement of donation of days on the part of the school district, there would be no additional cost to the district. The major distinction between the Croswell-Lexington and Sandusky contracts is that it would appear that in Croswell-Lexington a teacher is required to contribute one sick day to the bank while in the Sandusky district the contribution is voluntary.

It is my recommendation that the parties include in the new Collective Bargaining Agreement the following language:

"All teachers shall contribute one of their personal illness days to a sick leave bank. In addition, all teachers may donate an additional two days of their personal illness days to the sick leave bank if they so desire. Any teacher who becomes disabled as a result of illness or injury and has exhausted their own personal sick leave days may file a request to borrow additional sick leave days from the sick leave bank. The determination of whether or not a teacher shall receive additional days from said bank will be made by a committee composed of the Superintendent, two building Principals and three Association members appointed by the President of the D.E.A.

Each request will be handled on an individual basis and a majority vote of the six members shall be required in order to grant the request. No individual shall be entitled to receive more than a maximum of fifteen days from the sick leave bank.

The contribution of sick days, both on a mandatory and discretionary basis shall occur at the beginning of each school year.

Any individual who has been granted days from the sick leave bank shall be required to pay back the bank upon the resumption of work and the accumulation of the days equivalent to the number of days received by said individual.

F. Health Insurance - Article 15. The current agreement provides that the Board pays without cost to the employees full health insurance at the option of the employee the coverage shall be either Blue Cross/Blue Shield or MEA Super Med II. If two employees belong to the same family unit they are covered under a single policy. In addition the employees receive dental coverage through a program administered by three teachers and one administrator. The Board contributes currently the sum of \$8,000.00 per year. The panel which administers the dental program provides guidelines, rules and regulations for the determination of who is eligible and what coverage is available in the dental program. In addition, the Board provides dental coverage on a 50-50-50 co-pay plan. The carrier chosen by the Board must provide benefits that are equal to or better than Delta Dental Plan C with orthodontic rider 0-1. The language further provides that teachers who do not receive either Blue Cross/Blue Shield or MEA Super Med II insurance receive up to the sum of \$40.00 per month which is utilized for the purpose of purchasing MESSA options such as hospital confinement indemnity insurance, short term disability income insurance, long term disability income insurance, dependent life insurance, survivor income insurance and/or supplemental term life insurance. In addition each employee is covered by \$20,000.00 worth of group term life insurance.

The Association has proposed the following changes in the insurance coverage. The Board would be required to pay without cost to

employees M.E.S.S.A. Pak No. 3 which includes the Super Med II MESSA Health Insurance, Delta Dental Insurance on a 75-60-75 basis, long term disability insurance under the MESSA program which pays up to two-thirds of a person's salary, and the MESSA Vision VSP II Program. In addition, for those persons who did not require health insurance, the Association proposes to cover them with Delta Dental on an 80-80-80 basis, long term disability insurance under the MESSA Program, life insurance in the sum of \$40,000.00 with accidental death and disability coverage and the MESSA Vision VSP III Program.

Under the current dental program teachers submit their claims to the district. At the end of the year the dental committee allocates payment based upon the following criteria:

1. An amount equal to the smallest claim is paid to each teacher submitting dental claims.
2. An amount equal to the next smallest claim is paid to all remaining claims.
3. This process is continued until the pool is exhausted.

The Association maintains that the current dental pool is insufficient to provide coverage for the amount of claims both filed and those which are not filed as a result of teachers being aware of the fact that there are insufficient monies with which to pay the claim. Claims totalled for the past three years \$13,000.00, \$12,000.00 and \$14,000.00. The Association points out that the pool, while it may be adequate for the coverage of minor claims such as routine cleanings, examinations and occasional fillings, is insufficient to cover those claims for major work, such as bridges, crowns, dentures or orthodontics. The Association further argues that its total package would only increase the cost of fringe benefits by 14.9% or a total dollar increase in the sum of

\$16,540.00 per year. The Association maintains that such an increase in cost is reasonable in light of the actual increases in the Super Med II Program based upon a state wide average increase of 10.4%. This is in contrast to the Association representative's testimony concerning other industry wide health insurance programs in which costs are reported to have been increased by an average of 13 to 18% nationally. The Association believes further that the elimination of the choice between the MESSA Pak Program and Blue Cross is justified on the basis of the fact that only two of the forty-five teachers in the district are enrolled under the Blue Cross Program. The Association acknowledges that MESSA Pak Programs are a new concept in insurance. Thus, the MESSA Pak Programs are not currently in most of the Association contracts. However, there are certain thumb areas which contain those types of programs. The Association further points out that the MESSA Pak is a program designed to provide total insurance coverage while holding down increased insurance costs through the concept of packaging all of the coverages together thus reducing the cost of administration. In addition the costs are reduced by spreading the coverage over the widest possible group of teachers available.

The Board of Education has opposed the proposal of the Association. The Board of Education, in support of its position points out that no district in Sanilac County has MESSA Pak III. In addition the Board states that the MESSA Pak III Program would dramatically change the already well established and above average existing fringe benefit program offered by the Board. The Board indicates that Brown City does not offer MESSA, this is undoubtedly true since Brown City is not an MEA organization and accordingly would not be eligible to obtain the MESSA

benefits. In addition other districts all offer their employees either the MESSA or Blue Cross/Blue Shield packages, such as Carsonville-Port Sanilac, Croswell-Lexington and Sandusky. Marlette and Peck on the other hand only offer their employees the MESSA package.

The Board further points out that the pooled concept for dental costs is the most popular form of dental insurance in Sanilac County. Sandusky, Peck, Carsonville-Port Sanilac and Deckerville all have dental pools in varying amounts. The Board indicates that in some instances employees may have 100% of their dental bills paid based upon the number of claims made against the pool. However, under the Union's proposal the Board indicates that no one would ever have 100% of his or her dental bills paid since the program as proposed by the Union provides for a percentage of payment.

In response to the Union's life insurance proposal, the Board points out that it currently offers \$20,000.00 of coverage. The Board indicates that there is only one district, Croswell-Lexington, which offers life insurance in a sum greater than the \$20,000.00 currently being offered to its own employees.

In response to the MESSA Pak III proposal for the inclusion of long term disability, the Board again points out that only two districts have a form of long term disability in Sanilac County, while the majority of the districts do not have any long term disability program. The same is true with regard to the vision program.

In response to the option program offered by the Union for individuals who do not need health insurance, the Board states that at the present time it has a \$40.00 per month option program whereas Sandusky, Peck, Marlette and Brown City have none.

The Board indicates that the Association's proposal would cost

the district over \$30.00 more per teacher per month. Thus, the Association's proposal would cost the district over \$350.00 per teacher per year. This would result in a gross cost in excess of \$16,000.00 to the Board.

The Board further indicates a concern that if the MESSA Pak III package were to be granted to the exclusion of the Blue Cross/Blue Shield program a monopoly would have occurred wherein the Board could be subjected to large artificial inflationary increases in the cost of insurance over the next year or several years. Thus, the Board concludes that the granting of the Union's insurance proposal to what the Board terms to be the Union's insurance company would be an inefficient use of tax dollars.

It would appear, based upon the exhibits introduced, that the current cost for a family coverage is in the neighborhood of \$176.80 per month. The proposed package would cost approximately \$203.90 per month per family. It would further appear from Association Exhibit 3 that the MESSA program may be tailored or structured to fit the individual needs of the employees and the school district. The programs which exist in the thumb area, which includes Huron, Sanilic and Tuscola Counties, are basically tied into the MESSA Pak program on the basis of a MESSA Pak I or MESSA Pak II with some districts giving the option for the selection of Blue Cross/Blue Shield coverage. However, according to Association Exhibit 4 the vast majority of the school districts in the thumb area do not grant that alternative selection.

The dental programs run from a high of 100-90-90 coverage to no coverage in two of the districts and a low pool coverage in the sum of \$5,000.00. Life insurance runs from a high of \$35,000.00 to no coverage. It would appear that approximately eleven of the MEA represented districts have long term disability insurance coverage while sixteen do not. Most of the districts allow an option to those employees who do not obtain the regular coverage. Seven of the districts have

vision coverage.

The Association in Exhibit 5, indicated the advantages of a MESSA Pak such as the elimination of missing insurance applications, the elimination of pre-existing medical condition limitations, the elimination of misunderstandings as to what the insurance covers and carriers divulging confidential medical information to Boards of Education. In addition, the Association maintains that a MESSA Pak is easier to administer, meets a greater variety of coverage needs, provides superior coverages and grants advantageous rating factors.

It should be noted that the testimony of the Association witness, Mr. Schroeder, indicated that the various MESSA programs can be tailored to fit a specific package. This could be utilized, according to Mr. Schroeder, as a basis for reducing the overall cost impact. Mr. Schroeder indicated that the MESSA programs cover approximately 70,000 employees in school districts represented by the MEA. Apparently Blue Cross/Blue Shield coverage is minor by comparison. Mr. Schroeder also indicated that 82% of doctors throughout the state were included on the vision panel. The doctors include ophthalmologists, as well as optometrists.

Dr. Park, the Superintendent of the Deckerville School District, testified that within the Deckerville district currently thirty-one employees were covered by MESSA, two were covered by Blue Cross/Blue Shield and eleven were on the \$40.00 monthly option. He further indicated that the Blue Cross/Blue Shield rate for 1984 - 1985 had increased from \$178.34 to \$189.36. The MESSA rate, according to Dr. Park, was the sum of \$237.90.

Based upon all of the testimony and exhibits, it would be my

recommendation that the Association and Board include the following items in the new Collective Bargaining Agreement:

1. Retain the choice of the current Blue Cross/ Blue Shield coverage and the current riders, or allow the employees to select a MESSA Pak which would include the following items.
 - (a) MESSA Super Med II.
 - (b) Delta Dental 75-60-75 with a \$1,200.00 orthopedic maximum and a \$1,000.00 benefit pay out each year for each family member and the elimination of the \$8,000.00 dental pool.
2. Continue life insurance in the sum of \$20,000.00 with a \$40,000.00 accidental death and disability clause and a waiver of premium in the event of disability.
3. No inclusion of long term disability.
4. Include MESSA/VSP-2.
5. For those employees who are not covered under the terms of the plan as hereinabove set forth continue the \$40.00 optional benefit and allow the employees to select those options under the MESSA Program which are purchasable up to the sum of \$40.00 per month per employee.

This recommendation should cost the Board of Education considerably less than the sum of \$16,000.00. Based upon the testimony of the parties, there would only be a maximum of thirty-three employees who would be affected. Since the prior Association proposal would have increased the cost of the Board of Education by approximately \$350.00 per year, the maximum cost increase to the Board of Education under that proposal would have been approximately \$11,500.00. The Board will be saving the sum of \$8,000.00 which it currently pays into the dental pool. In addition, it will not incur any additional costs with regard to life insurance nor would it incur any additional costs insofar as long term disability is concerned if that is not included in the package.

Accordingly there should be little or no additional cost to the Board of Education.

G. Layoffs - Article 20. Both the Association and the Board of Education have submitted proposals regarding the subject of layoffs. The Board of Education indicates that layoffs in the current Collective Bargaining Agreement are involved and contrary to the best interest of the Board, the teachers and the students. In addition, the Board of Education indicates that the layoff and recall procedure has not worked satisfactorily in the past. The Board indicates that it believes that any amendment of the layoff and recall language must balance the needs of the teaching staff with regard to job security, but at the same time should not do violence to the quality of education provided to the students nor have adverse impact on the curriculum. The Board points out that it has a statutory obligation to provide for quality education and it cannot accomplish that purpose if unqualified teachers are placed before students at any grade level. The Board acknowledges that under the Michigan State Teacher's Certification laws at the present time, all certified teachers in the State of Michigan are qualified to teach all subjects at the seventh and eighth grade levels. The Board points out that under the current language the Board may not layoff a teacher unless there is a substantial decrease in the students enrolled in the school district, substantial decrease in the revenues to the school district or there are other substantial budgetary considerations which shall have a detrimental effect on the district. The Board points out that the language does not take into consideration changes which may occur in the curriculum as determined by the Board of Education nor does the current language provide for a reduction if there is a change in student interest in terms of particular subject matters. In addition,

the Board points out that the current language does not take into consideration a change in the number of students at the high school level versus the elementary school level, nor does the change necessitate a reduction in the number of students but simply a change in their attendance pattern. The Board further with respect to paragraph 1 of Article 20 would simply state "In the event of a reduction in personnel, the following methods shall be used to determine the order of retention." In addition in Section 1 the Board's proposal would read, "The district shall establish its curriculum needs and the order in which they are to be filled." That one sentence, according to the Board would replace some nine lines which say essentially the same thing. Paragraph 3 of the Board's proposal relates to the subject of qualifications along with certification and seniority. The proposal essentially provides that at the kindergarten through 6 levels the criteria used for assignment would be based upon certification and seniority. However, at the 7 through 12 grade level the criteria would be certification, qualifications and seniority. Qualifications are defined as a requirement that the teacher must have a major or minor in the subject area and also meet other requirements as established by the North Central Accreditation Association. This the Board maintains, would allow it to go to the public and present a stronger case in terms of selling the schools to the community in an effort to increase operating millage. The Board further notes that the inclusion of qualifications would at the most require only one or two teachers to obtain additional credits.

The current contract contains a provision which states:

"If no vacancy remains in any grade or department for which the teacher is certified, the teacher will be laid off.

The effective date of any such layoff shall be the first day of the forthcoming school year."

The Board proposes to insert additional language which would state, "The layoff notice shall be given to the teacher at least fourteen calendar days before the effective date of the layoff when possible." The Board states that this would allow the teacher at least fourteen days notice as opposed to virtually no notice at the present time.

The Board has further proposed in Article 20 paragraph (a5) that the Association be given the opportunity to review the layoff list prior to formal adoption. The Board states that this particular proposal is designed to eliminate a wrongful layoff. It further states that it would result in the elimination of grievance arbitration and court cases or a tenure hearing that could result in thousands of dollars of back pay liability should the wrong person have been deemed to have been laid off. Thus the Board concludes that the Association should avail itself of the opportunity to work with the Board in establishing the proper order of layoffs in the event layoffs become necessary.

The Board has further proposed that Article 20 paragraph (a6) provide that part-time teachers accrue seniority at the same rate as full time teachers. The Board maintains that this is based upon tenure commission rulings. Thus the Board concludes it is necessary to include it in the Collective Bargaining Agreement in order to eliminate the possibility of unnecessary litigation.

The Association has proposed language which would provide that all leaves be granted prior to layoff based upon the Association

rationale that by offering a liberalized leave policy the necessity of layoffs could be avoided or minimized. In addition the Association maintains that the avoidance of layoffs would offer cost reductions to the district by eliminating the need to pay unemployment benefits. In support of its position the Association notes that in Sandusky the Board may grant request for leaves of absence prior to the reduction of staff not to exceed ten percent of the staff. This proposal of course is discretionary insofar as the Board of Education is concerned in Sandusky. In Carsonville-Port Sanilac a teacher may take a voluntary unpaid leave of absence for a semester or a school year in order to preserve employment opportunities for another teacher. The Association further proposed that seniority should be frozen at current levels when members resign, retire or are discharged for just cause or transfer to a non-bargaining unit position. The rationale for the Association position is that employees should not be allowed to accumulate seniority while in non-bargaining unit positions. The Board on the other hand with regard to this proposal, states that it is not a traditional position taken by the MEA and further that the Collective Bargaining Agreement in the past has specifically permitted the accumulation of seniority while outside of the bargaining unit. The Board further points out that it would make administrative positions less attractive to bargaining unit members in the future than they have been in the past.

In Carsonville-Port Sanilac there is a freeze on those administrators who assume positions after July 1, 1982. In Sandusky a teacher who transfers to a non-bargaining unit position retains his or her seniority for a period of two years.

Insofar as the layoff language is concerned the Association proposes no change in those articles. The Association indicates that the layoff language has been in place for years without major revision. There have been prior reductions of staff under the terms of the layoff language and those reductions have been accomplished without problem. The Association further points out that to change most of the process at this time would subject laid off teachers to a different process of recall than the process by which they were laid off. Thus the Association is opposed to the Board proposal in its entirety.

The Association has submitted an additional proposal which would provide that Tri-County Bargaining Association teachers laid off from other school districts receive consideration for vacancies in the Deckerville school district prior to other new employees. The Association rationale for this position is that laid off Tri-County Bargaining Association teachers provide a pool of experienced teachers from which the district could hire. Further, the Association points out the potential of reciprocity from the other Tri-County Bargaining Association districts provides possible reduction of costs for Deckerville by reducing payment of unemployment benefits when there are layoffs in Deckerville but the other districts are willing to hire Deckerville teachers.

In response to this proposal the Board of Education has indicated it is opposed to being obligated to have to hire a specific person. Moreover, the Board of Education indicates that it believes there may be a question of legality insofar as the proposal is concerned.

With regard to the Collective Bargaining language concerning layoffs, I make the following recommendations:

1. The Board's proposal with regard to Article 20 paragraph (a), stating,

"In the event of a reduction of personnel the following methods shall be used to determine the order of retention."

and the Board's proposed paragraph 1 stating:

"The district shall establish its curriculum needs and the order in which they are to be filled."

should replace the current collective bargaining language.

The Board's proposed language for Article 20 paragraph (a2) should be modified to read:

"A district wide seniority list shall be established. The list shall be published by the Board within thirty days of the signing of the contract. When two or more teachers have the same length of service, the position on the seniority list shall be determined by the drawing of lots.

The Board's proposal with regard to paragraph (a3) of Article 20 should read as follows:

"Teachers shall be assigned to the available positions based upon certification, qualifications and seniority as hereinafter set forth. At the k - 6 level, the determining factors shall be certification and seniority. At the 7 - 12 level, the determining factors shall be certification, qualifications and seniority. Qualifications shall be defined as possessing a major or minor in the subject area available and also meeting any other requirements as established by North Central. In the event that two or more teachers have both the certification and relatively equal qualifications, seniority shall be the determining factor."

Article 20 paragraph (a4) of the Board's proposal should read as follows:

"In the event that a teacher is to be laid off the teacher shall be given at least

fourteen (14) calendar days notification before the effective date of the layoff."

Paragraph 5 of Article 20 of paragraph (a) of the Board's proposal should be amended to read as follows:

"The Association shall have the opportunity to review the layoff list prior to formal adoption by the Board. Upon receipt of a layoff list the Association shall have the opportunity within five (5) days of receipt of the list to specify in writing any disagreement with the layoff list. The failure to specify any disagreement and/or changes necessary to correct the layoff list shall act as a bar to the Association filing a grievance or proceeding to arbitration."

Paragraph 6 of Article 20 paragraph (a) of the Board's proposal shall read as follows:

"The seniority of part-time teachers shall accrue at the same rate as full time teachers."

The Board's proposed paragraph (b) should read as follows:

"The recall from layoff shall be handled in the same fashion as the layoff."

With regard to the Association proposal concerning leaves of absence before layoffs are to take place, I would recommend the following language.

"In the event that layoffs are to take place, the Board may offer the opportunity to members of the bargaining unit to request a leave of absence prior to the reduction of staff. The determination as to whether or not a member of the staff is granted a leave of absence shall be subject to the sole and exclusive determination of the Board."

With regard to Association position concerning Article 20 - Seniority Freeze, it is my recommendation that the language should not be included in a new Collective Bargaining Agreement. It is my feeling that this proposal would have a chilling effect upon members of the bargaining unit who desire to transfer into administrative positions. In addition

it would change a practice which has prevailed in the system for a number of years.

With respect to the Association position concerning Article 20 (E.e) it is my recommendation that the following language be placed in the Collective Bargaining Agreement.

"Teachers who have been laid off from other Tri-County Bargaining Association bargaining units who apply for a vacancy shall receive consideration for employment and be given preference where possible prior to the hiring of other new employee applicants. However, the final determination as to whether or not a laid off teacher from a different bargaining unit is to be hired is vested solely within the discretion of the Board. In the event that the Board determines not to hire an applicant from another bargaining unit, the Board's decision should be based upon relevant factors of certification and qualifications."

H. Early Retirement Incentive - Article 20 (G). There is no language contained in the prior Collective Bargaining Agreement for early retirement incentives. The Association has proposed that the Board should agree to pay the sum of \$5,000.00 plus twelve months of health insurance coverage to any teacher who retires after attaining thirty years of experience and who is at least fifty-five and not more than sixty years of age and has had at least ten years within the Deckerville system. The Association has further proposed a payment of \$3,000.00 and six months health insurance coverage to any member who has completed thirty years of teaching and reach the age of sixty-one but less than sixty-five years and has had five years within the Deckerville system. In addition teachers opting for this early retirement would be required to show proof that they are eligible for and receiving teacher's retirement through the State of Michigan.

The rationale for the Association position may be summarized as follows: The provision of early retirement incentives may induce

teachers to retire thus creating openings for less experienced teachers. The less experienced teachers typically receive a lower salary by virtue of their fewer years of experience on the salary schedule. In addition, by encouraging early retirements during periods of layoff the necessity for reducing staff can be reduced or eliminated thus saving the district unemployment benefit costs. The Association indicated that the Croswell-Lexington district has a policy on early retirement incentive which allows teachers with ten years in the system a payment of approximately \$15,000.00 over a period of two or three years provided that they qualify under the State Teacher's Retirement Program.

The Board in opposition to the Association proposal has indicated that it is not necessarily true that the early retirement incentive would induce teachers to retire. In addition the Board of Education has already been through a period of layoffs and states that there are teachers on the layoff list who do not have significantly less experience than teachers who may retire and accordingly the savings might be negligible. Further, the Board of Education introduced an exhibit indicating that none of the districts in Sanilac County currently have an early retirement incentive program. According to the Board the early retirement incentive program has been ruled by an arbitrator to be a violation of the EEOC guidelines relative to age discrimination and in addition would not preclude an individual after collecting an early retirement incentive from applying for re-employment and if refused at that point, becoming eligible for unemployment compensation. Accordingly the Board concludes that the facts do not support the concept of an early retirement incentive program.

The Association in response to the Board's contentions maintains that an early retirement incentive does not violate the Michigan School Code nor the Michigan Constitution. In support of its position

it has attached to its Brief a recent decision of the Michigan Supreme Court (Jurva, et al. v. Attorney General of the State of Michigan v. Board of Education of the Rochester Community Schools No. 68500 - decided October 16, 1983). The Michigan Supreme Court in the Jurva case determined that the provision for the payment of early retirement incentives in a Collective Bargaining Agreement between the Rochester Education Association and the Board of Education of the Rochester Community Schools violated neither the constitutional provisions of Article 9, Section 24 of the Constitution of 1963, nor did they violate the Teacher's Retirement System provisions. In addition the Association has taken the position that an early retirement incentive does not violate the age discrimination in an employment act nor does it violate the Elliott - Larsen Civil Rights Act. This is based upon the Association's contention that those two acts specifically provide for exceptions wherein it is not unlawful for an employer or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan which is not a subterfuge to evade the purposes of the act.

With all due respect to the arbitration decision wherein an arbitrator apparently held that an early retirement incentive program violates EEOC guidelines, I must respectfully disagree. I do not believe that the proposal of the Association violates any state or federal law of which I am aware. If it does, than there are numerous other school districts which have provided early retirement incentives which have violated either state or federal law or both.

However, this program could indeed cost the Board of Education a great deal of money. In the event that the Board of Education was going to layoff ten employees and it was required to allow ten other employees to retire and obtain the early retirement incentive, the Board

would incur an initial cost of \$50,000.00 plus another \$20,000.00 or \$25,000.00 for the payment of the health care coverage as proposed by the Association. It is doubtful that the Board would be able to effectuate an equivalent savings. Moreover, the Association proposal is not directly related to a period of layoffs. The Association proposal would be applicable at any time a teacher qualified under the provisions regardless of whether or not the employer was either laying off employees, had laid off employees, or was going to layoff employees in the future. I do not believe that the financial position of the Board should be put to this test at this time. Accordingly I would recommend that the Association proposal not be included within the new Collective Bargaining Agreement.

I. Salary Improvement and Duration. The Board of Education has proposed a salary freeze for the school year 1983 - 1984 and salary reopeners for the school years 1984 - 1985 and 1985 - 1986.

The Association has proposed increases for each of the three years in question of five percent. The improvement is to be applied to all steps of the 1982 -1983 salary schedule. In addition, the Association has proposed a full cost of living in each of the three years. The rationale for the Association's position is based upon the following factors: The Association believes its position to be moderate. It points out that Deckerville has always had the ability to be the leader in providing competitive teacher salaries in Sanilac County. The Association is seeking to maintain its relative position in the Sanilac and tri-county areas with respect to salary schedules vis a vis other bargaining units. In addition, the Association points out that Deckerville does not compare favorably with other mid Michigan school districts with respect to teacher salaries.

The Association introduced an exhibit of salary comparisons for BA's in the Huron, Sanilac and Tuscola County areas. In 1982 - 1983 Deckerville would have ranked eighth out of approximately twenty-seven districts. At the BA maximum Deckerville would have ranked tenth. In terms of MA's Deckerville would have ranked ninth at the minimum salary schedule level and eleventh at the maximum salary schedule level. In terms of the highest salary schedule level, which could be either a doctorate or masters plus hours, Deckerville ranks fifteenth. In a comparison of MEA districts in Sanilac County only, Deckerville ranks first in BA minimums, second in BA maximums, second in MA minimums, second in MA maximums and sixth at the highest salary schedule level. In a comparison of general fund equity the Deckerville fund equity for 1982 - 1983 as a percentage of current operating expenditures ranks at the top of the list. In addition, in terms of real dollars the Deckerville fund equity was second only to Croswell-Lexington.

In response to the Association contentions, the Board has indicated that it has had, and will continue to have in the future, an inability to pay. Deckerville is out of formula and therefore receives no state aid. In terms of state equalized valuation, there are three communities in the county with a lower state equalized valuation and three with a higher state equalize valuation. In terms of enrollment of students, Deckerville has the third lowest number of students. Its budget is the fourth lowest.

The school board maintains that it is necessary to maintain an adequate fund equity for the purpose of meeting payroll and monthly bills as well as providing for the protection against breakdowns such as the cost of a boiler. In addition, one needs to protect the staff and program against growth in expenditures while experiencing no growth

in revenues. A fund equity balance also allows the school district to exercise flexibility with regard to either borrowing or avoiding borrowing monies in anticipation of taxes. Further, it grants the management of the school district the flexibility to make purchases and repairs as needed, as well as giving it the ability to take advantage of opportunities to engage in programs which require matching funds. The Board further points out that good accounting procedures require it to have a fund balance and further that there are a number of theories as to what constitutes an adequate balance. For example, some maintain that a fund balance should contain the equivalent of at least one payroll and a reserve for the payment of bills or one months payroll and a reserve for the payment of bills, or the auditors have recommended a minimum of ten percent of the budget should be retained in the fund balance. There are various other theories as well. The state average of all school districts seems to equal approximately eight percent.

The district has provided an exhibit for the projected budgets for 1984 - 1985 and 1985 - 1986. If the dire predictions of the district come true, the fund balance would be reduced from the sum of \$238,000.00 in 1982 - 1983 to a negative \$335,000.00 in 1985 - 1986. This is based upon projected increases and expenditures and projected decreases in revenues. In part it is based upon a projection of a decrease in the state equalized valuation. In addition the Board had proposed an increase of 4 mills which was defeated at the polls in 1983. Dr. Park, testifying on behalf of the Board, indicated that it was possible that the Board could live with a four percent wage increase in fiscal year 1984 - 1985, but that it had not projected wage increase for fiscal year 1983 - 1984, nor had it projected any increase for fiscal year 1985 - 1986. The Board exhibits further indicate that in 1982 - 1983,

three of the districts in Sanilac County engaged in wage freezes. In addition, in 1983 - 1984, two other districts froze their wages. The Board Exhibit 4 further would indicate that even if Deckerville's wages were to be frozen for the 1983 - 1984 school year, the salaries would still be the highest in the Sanilac County school districts at the BA minimum level. In addition, the salaries would be within approximately \$800.00 of the highest salaries at the BA maximum level. The same would be true of the salaries at the MA minimum level and there would be a difference of approximately \$1,200.00 at the MA maximum level.

There was an indication during the course of the Board testimony that the Board intends to seek new millage during the Spring of 1985 for the 1985 - 1986 school year. The Board currently levies 23.75 mills. There are no exhibits indicating the average millage levied within Sanilac County. However, Deckerville is on the low side of the statewide average. The testimony further indicated that in each of the three years prior to the 1983 - 1984 school year the teachers in the Deckerville system received wage increases in the sum of ten percent. In addition there have been no other freezes in Deckerville in the past. Deckerville has had to reduce its staff in the past due to the lack of a fund equity balance.

With regard to the Association proposal concerning a cost of living allowance, I must recommend against the proposal. There seems to be no justification for it. None of the exhibits indicate that any of the school districts in either Sanilac County or any of the other counties in the thumb area have a Collective Bargaining Agreement which contains a cost of living clause. Moreover, the Association has made no presentation with regard to the type of cost of living clause it wishes to have placed in the contract. A cost of living clause quite

simply is the most difficult type of wage benefit for a governmental entity to properly fund. The school Board could not estimate how much it would need in order to fund a cost of living clause over the next three years. No one has a crystal ball and can accurately estimate where the economy will go within the next three years. No one can estimate what the consumer price index will do in the next three years in terms of increasing insofar as the index at the present is concerned. Accordingly it is my recommendation that no cost of living clause be included in the Collective Bargaining Agreement for the next three years.

With respect to the Associations proposals for increases of five percent in each of the three years, I believe that each year must be looked at separately. It is evident that there is currently a fund balance which would be more than adequate to offset any reasonable increases granted to the teachers in any one or all of the three years in question provided that the school district does not incur either a major decrease in revenues or a major increase in other expenditures. At best the determination as to whether or not the Board of Education will incur major increases in expenditures over and above those recommended in this decision is speculative. No one can say for certain whether or not a boiler will be required to be replaced or whether a roof will require maintenance and repairs or whether the buses utilized by the school district will have to be replaced. By the same token no one can say for certain whether or not the Board's revenues will increase, decrease or remain at the current level. It is entirely possible that as the economy goes so too go a portion of the revenues of the school district. For example, if the economy continues to improve, the amounts received by the school district from the State of Michigan will continue to increase. By the same token if the economy continues to improve it

would have a positive effect with regard to state equalized values and therefore the taxes collected by the school district would continue to improve. On the other hand, should the economy begin to move in the opposite direction, there would be an adverse impact on funds received from the State as well as property taxes based upon decreasing valuation. It would be equally speculative to try and determine how the citizens will react to an increase in millage. However, the citizens in Deckerville are no different than the citizens throughout the rest of the State. Quite simply, if they wish their children to have a quality education they must be willing to pay for it. This necessarily includes the obligation to on occasion vote for increased millage as the costs of education increase. The millage currently being assessed for the cost of education in the Deckerville area is far below the State average. The citizens of the community must recognize that fact and be willing to vote for increased millage if they wish their children to retain the level of education and the quality of instruction which they have received in the past. The teaching staff cannot be expected to have their salaries eroded away by inflation simply because the citizens of the community are not willing to pay an adequate amount toward the cost of educating their children.

By the same token the teachers cannot expect to receive outlandish salary increases simply because they wish to obtain greater salaries. Any increases sought by the teachers must be reasonable in light of the economy and the community in which the teachers have chosen to practice their profession. It is obvious that all of the school districts within Sanilac County have experienced difficult times. Each of the other school districts has experienced a freeze during the years that the teachers in the Deckerville community were receiving

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annual increases of ten percent. It may well have been necessary to grant the teachers those increases in order to establish an adequate salary level. It is not apparent that that salary level has been established by virtue of the comparables which have been introduced into evidence. Accordingly, it is my recommendation that for the 1983 - 1984 fiscal year the salary levels be frozen. In addition, it is my recommendation that for the 1984 - 1985 fiscal year the salary schedules be increased by the sum of four percent.

I do not believe that it is in the best interest of the school district nor the teachers to require a wage reopener in 1985 - 1986. This would simply place the parties in the same position as they have been in for the past fifteen months in approximately one year from now. That is to say that they would be required to again go to the bargaining table in order to establish a salary level for the 1985 - 1986 fiscal year. I do not believe that this is conducive to the stability of the collective bargaining relationship in the community. Moreover, I believe that based upon the recommended freeze for 1983 - 1984 and the rather reasonable increase recommended for the fiscal year 1984 - 1985, the school district will be in a position to afford an increase for the fiscal year 1985 - 1986. Accordingly it is my recommendation that in 1985 - 1986 the school district pay an additional five percent. This would mean that over a period of three years the school district will have incurred additional salaries of approximately nine percent. That equates out to an average of three percent a year and is well within salaries being granted across the State to comparable teaching units.

The recommendation also will give the Board of Education the opportunity to engage in long range planning with regard to its future cost. It will know exactly what is expected of it in terms of the wage-salary schedules to be paid over the next two fiscal years. It

will place the Board of Education in a position whereby it will be able to advise the public of exactly what its needs will be in the future. Hopefully, the public will respond by granting the Board adequate millage levels within which to maintain the quality of education that the public has come to expect of the Deckerville Community Schools in the past. In the event that the public refuses to acknowledge the needs of the Board then the Board has adequate means within which to meet its budgetary restrictions by engaging in layoffs as it has done in the past. Of course, this is the most drastic solution, and I certainly would not recommend that the Board engage in any layoffs until such time as it becomes absolutely necessary. The teachers, also, should recognize that by having made demands for wage increases and having received a recommendation for at least a portion of those demands they have placed an additional fiscal burden upon the Board which in the future may require the layoffs of certain members of the bargaining unit in order to comply with the recommended salary schedules. Thus it is incumbent upon the teachers as well as the members of the Board of Education to engage in an educational campaign whereby the citizens of the community will become aware of the needs of the Board.

J. Longevity. The current Collective Bargaining Agreement provides for payments of \$700.00, \$800.00 and \$900.00 per year based upon years of experience. The Board has proposed no increase. The Association has proposed an increase of \$100.00 in each of the three steps. The Association maintains that longevity payments have not been subjected to yearly increases as have the salary schedules. Accordingly the Association concludes that longevity payments have lost much of their comparative value on a yearly basis. The last increase in longevity payments occurred in 1980.

In response the Board indicates that the Association has introduced no exhibits of comparables and therefore concludes that the Deckerville longevity schedule already is equal to or greater than other school districts within Sanilac County. Accordingly the Board concludes in light of its fiscal position and the comparables within the county that an increase in longevity payments is not warranted.

Based upon the lack of exhibits introduced by the Association it would appear that on a comparable basis Deckerville already is at or near the top with regard to longevity payments on a comparative basis. In addition, since the last increase occurred in 1980, it has not been that long a time and therefore there has not been that great an erosion with regard to the comparative value of the longevity payments being made now as opposed to a few years ago. Finally, the fiscal position of the Deckerville Community Schools would not seem to dictate that an increase in longevity payments should take place during the term of the proposed Collective Bargaining Agreement. Accordingly, it is my recommendation that no increase in longevity payments take place.

K. Schedule B - Extra Curricular. Currently extra curricular payments are based upon the base step of the bachelor degree salary schedule plus a percentage as negotiated in the Collective Bargaining Agreement for the various extra curricular duty assignments. The Association has proposed that in the future the extra duty assignments be calculated based upon the fifth, sixth and seventh steps of the bachelor degree salary schedule in 1983 - 1984, 1984 - 1985 and 1985 - 1986 respectively. In addition, the Association has proposed an increase in the hourly rate paid for adult education, driver's education and summer teaching from the current \$9.00 per hour to \$10.00 in 1983 - 1984, and \$12.00 per hour for the fiscal years 1984 - 1985 and 1985 - 1986. The Board has proposed no increase.

The Association maintains that the current method of payments do not adequately compensate teachers involved in extra curricular programs for the amount of time and responsibility required. In addition, the Association takes the position that the current method of payment does not fully recognize the experience level of teachers involved in the program. The Association introduced two exhibits indicating that in Marlette compensation is based upon the appropriate percentage of the B.A. salary schedule and the experience of the employee in the activity and that in Croswell-Lexington all percentages are computed from the eighth step of the B.A. salary schedule. Neither of those two exhibits of course actually determines what amount of dollars the individuals receive in those school districts. For example, the percentages in Croswell-Lexington may be less than the percentages paid in Deckerville and accordingly in terms of actual dollars the teachers in the Croswell-Lexington district may not receive as much as the teachers in Deckerville receive. The proposal of the Association would increase the amount received by the individuals involved by a two step process. First, the individuals would receive a percentage of the fifth step of the pay level as opposed to the base step. This would result in an automatic increase. In addition, because the proposed salary increases apply to all steps of the pay level, the individuals involved would also receive an additional increase as a result of the wage increases.

The Board points out that there are three different levels of experience for extra curricular activities, each calling for a stepped up percentage of the Bachelor Step 1 salary level. Thus the Board points out that it is in this fashion that extra duty assignments are reimbursed. The Board indicates that by using percentages off higher steps of the B.A. salary schedule the teachers would be receiving double credit for their

experience since they are already receiving credit on a three tiered basis for extra curricular activities. The Board further points out that the percentages utilized in Marlette are significantly lower than those utilized in Deckerville. Thus, the percentages do not yield a dollar amount equivalent to those paid to Deckerville teachers. The Board points out that the same is true with regard to Croswell-Lexington. Thus, the Board concludes that the facts do not support the change suggested by the Union.

With respect to the Association position of increasing to the fifth, sixth and seventh steps of the B.A. salary schedule, I am forced to agree with the conclusions drawn by the Board of Education. It does not seem to me to be reasonable to negotiate a wage increase on one hand and to have levels of experience calling for higher percentages and at the same time seek to increase the step upon which those percentages are based. I believe that the Board is correct in indicating that that would involve a double payment or at least a computation based upon two separate increases. It would appear furthermore that the teachers who engage in extra curricular activities are in fact adequately compensated based upon a comparison of districts within Sanilac County. Accordingly, it is my recommendation that extra duty assignments be calculated on the same basis as they have been in the past insofar as those assignments are concerned which require a computation of a percentage of the wage rate.

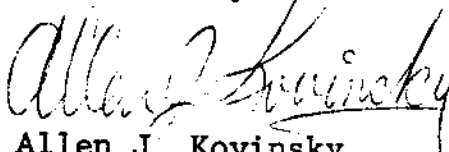
However, it is also my belief that as to those teachers who engage in teaching adult education, driver's education and summer school the same factors are not necessarily applicable. Those teachers are receiving, and have received, the sum of \$9.00 per hour. Since there has been a recommended increase in the salaries of the teachers of approximately nine percent for the three fiscal years in question, I believe that an

equivalent amount is both reasonable and necessary for those teachers. Accordingly, it would be my recommendation that commencing on July 1, 1985, the hourly rate be increased from the sum of \$9.00 per hour to the sum of \$10.00 per hour.

II. CONCLUSION

I wish to thank each of the parties and their representatives for the manner in which they conducted themselves as well as their cooperation in scheduling meetings and attending the meetings. I would hope that the recommendations contained in this Fact Finding Report will form a basis for the parties to conclude a Collective Bargaining Agreement in as rapid a manner as possible.

Respectfully submitted,



Allen J. Kovinsky
Fact Finder