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STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY FACT FINDING

In the Matter of the
Fact Finding Between:

DEERFIELD PUBLIC SCHOOLS

-and-

MERC Case No. L92 J-0593

DEERFIELD EDUCATIONAL SUPPORT
PERSONNEL/MICHIGAN EDUCATION ASSN.

FACT FINDER'S REPORT AND RECOMMENDATIONS

APPEARANCES

FOR DEERFIELD PUBLIC SCHOOLS:

John McEwan, Superintendent
Elise Haines
Daryl Seegert
Kevin Winkler

FOR DEERFIELD ESP/MEA:

Pat Schopmeyer
Willie Mathews, Jr.
Jim Ponscheck
Lana Millyard
Barbara Iott
Judy Joffman
Terrence M. Beurer
Janet Lanz

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

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Deerfield Public Schools

Following the expiration of the parties' Collective Bargaining Agreement at the completion of the 1991-92 school year, the parties were unable to reach agreement on a successor Collective Bargaining Agreement after negotiation and mediation. As a result, an impasse was declared and the undersigned was appointed Fact Finder.

The Petition for Fact Finding, filed by the Michigan Education Association, stated that there were two issues in dispute, namely, wages and agency shop.

At the time the Fact Finder conducted his hearings, the parties as to wages had at the time seemed to agree that there would be a two year agreement covering the 1992-93 school year

George T. Roumell Jr.

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and the 1993-94 school year. The District had offered a 2% increase for each of the two years. The Association had reduced its table position to 5.5% for each of two years.

As to the agency shop, the Association proposed the following language:

Article VI. Agency Shop

Change to the following:

Section A. In accordance with the terms of this Article, each bargaining unit member that has signed a membership form by November 1, 1992, any member wishing to sign a membership form, or any new hire, within thirty (30) days of employment shall, as a condition of employment, join the Association or pay a Service Fee to the Association.

Section B. Association Members. Bargaining unit members joining the Association shall pay dues to the Association in accordance with its policies and procedures.

Section C. Service Fee Payers. Bargaining unit members in accordance with Section A, not joining the Association shall pay a Service Fee to the Association as determined in accordance with the MEA Policy and Procedures Regarding Objections to Political-Ideological Expenditures. The remedies set forth in this policy shall be exclusive, and unless and until the procedures set forth therein have been availed of and exhausted, all other administrative and judicial procedures shall be barred.

Section D. Non-Payment of Dues or Service Fees. If a bargaining unit member, in accordance with Section A, does not pay the appropriate amount of dues or service fee to the Association, upon written notification by the Association, the employer shall deduct that amount from the bargaining unit member's wages and remit same to the Association.

Should such involuntary payroll deduction become legally disallowed, the employer shall, at the written request of the Association, terminate the employment of such bargaining unit member within sixty (60) days of receiving the notification by the Association. The parties agree that the failure of any such bargaining unit member to

comply with the provisions of this Article is just cause for discharge from employment.

Section E. Payroll Deduction. Upon written authorization by a bargaining unit member or pursuant to Section D, the employer will deduct the appropriate amount of the dues or service fees from the bargaining unit member's wages. The deductions will be made in equal amounts from the paychecks of the bargaining unit member beginning with the first pay following receipt of the written authorization from the bargaining unit member or the Association and continuing through the last pay period in June of each year. Monies so deducted will be transmitted to the Association, or its designee, no later than twenty (20) days following each deduction.

Section F. Hold Harmless. The Association shall indemnify and hold the Employer harmless against any and all claims or liabilities, including unemployment compensation, court costs and attorney fees, that arise out of the Employer's compliance with the provisions of this Article.

The District had proposed to keep the present language in the contract, which reads:

Section A. In accordance with the terms of this Article, each bargaining unit member may join the Association.

Section B. Association Members. Bargaining unit members joining the Association shall pay dues to the Association in accordance with its policies and procedures.

Section C. Payroll Deduction. Upon written authorization by a bargaining unit member the employer will deduct the appropriate amount of the dues from the bargaining unit member's wages. The deductions will be made in equal amounts from the paychecks of the bargaining unit member beginning with the first pay following receipt of the written authorization from the bargaining unit member or the Association and continuing through the last pay period in May of each year. Monies so deducted will be transmitted to the Association, or its designee, no later than twenty (20) days following each deduction.

Section D. Should the Association gain 100% membership of all covered employees, the

parties agree to meet to develop traditional agency shop language which shall be added to this agreement.

AGENCY SHOP

There is no question that the issue of agency shop language has been a major stumbling block to agreement. The District has taken the position that the current language should be continued. The District has noted that of the 17-person unit, there are five persons who have chosen not to join the Association or pay service fees. For this reason, the District maintains that those persons employed by the District who do not wish to join the Association or pay service fees shall not be required to; that until the Association had 100% of its 17-person bargaining unit members of the Association. Thus, the District does not wish to adopt the agency shop clause as proposed by the Association.

The Association pointed out that in the surrounding school districts that are organized, each district, to the best of all persons' knowledge, have an agency shop clause; that the Lenawee Education Association has no contract without an agency shop clause.

Agency fees have been held by the United States Supreme Court to be constitutional. This was the point made by the United States Supreme Court in Aboud v Detroit Board of Education, 431 US 949, 98 S Ct 1723, 95 LRRM 2411 (1977), where the Court relied on previous decisions that it had issued confirming the constitutionality of agency shop fees under the Railway Labor Act (RLA) in Railway Employees Dept. v Hansen, 351 US 225 (1956) and International Association of Machinists v

Street, 367 US 740 (1961).

In Abood, referring to Hansen and Street, the Court again noted that the congressional motivation to allow the collection of agency fees under the RLA was based on its balancing of the interests and needs of unions who were subject to the duty of fair representation for all members of a bargaining unit (union and nonunion) and the inevitable costs of being the exclusive bargaining representative versus the individual rights of employees who may not be in agreement with all positions taken by a collective bargaining agent:

The designation of a union as exclusive representative carries with a great responsibilities. The tasks of negotiating and administering a collective bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditures of much time and money....The services of lawyers, expert negotiators, economists, and a research staff, as well as a general administrative personnel may be required. Moreover, in carrying out these duties the union is obliged to "fairly and equitably represent all employees,...union and nonunion" within the relevant bargaining unit....A union shop arrangement has been thought to distribute fairly the costs of these activities among those who benefit, and it counteracts the incentive that employees might otherwise become "free riders" to refuse to contribute to the union while obtaining the benefits of union representation that necessarily accrue to all employees. 95 LRRM at 2415 (citation deleted).

The Court held the identical concerns motivated the Michigan Legislature to pass Michigan's agency shop statute. 95 LRRM at 2416. The Court noted:

The desirability of labor peace is no less important in the public sector, nor is the risk of "free riders" any smaller. 95 LRRM at 2417.

Thus, according to the Court, the same "important governmental interest" recognized in the Hansen and Street cases supported the "impingement" upon freedom of association created by the Michigan statute:

Thus, insofar as the service charge is used to finance expenditures by the union for the purposes of collective bargaining, contract administration, and grievance adjustment, those decisions of this court appear to require validation of the agency shop agreement before us. 95 LRRM at 2417.

In so recognizing the validity of the Michigan statute, the Supreme Court expressly rejected the claims of nonunion employees that, as public employees, they had weightier First Amendment interests than a private employee in not being impelled to contribute to the cost of exclusive union representation:

The very real differences between exclusive agent collective bargaining in the public and the private sectors are not such as to work any greater infringement upon the First Amendment interests of public employees. 95 LRRM at 2419. (Emphasis added).

In so doing, the Court recognized that a public employee union, by its very nature, has a role in public debate regarding school financing and other public issues usually not present in the private sector. Nevertheless, the Court held that those differences simply do not "translate into differences in First Amendment rights." Thus, the Court concluded that the Michigan Court of Appeals was correct in viewing the Supreme Court's decisions in Hansen and Street as "controlling in the present case insofar as the service charges are applied to collective bargaining, contract administration, and grievance adjustment purposes." 95 LRRM at 2420.

Most of the cases subsequent to Abood deal with the procedural issues around implementation of an agency shop provision or the chargeability of specific types of expenses as opposed to the constitutionality of such a provision as a whole. See, Chicago Teachers Union v Hudson, 475 US 292, 106 S Ct 1055, 121 LRRM 2793 (1986) Lehnert v Ferris Faculty Association, MEA-NEA, 707 F Supp 1490, 133 LRRM 2251 (WD Mich, 1989), judgment affirmed by 893 F2d 111, 133 LRRM 2257 (6th Cir, 1989), cert denied by Lindsey v Ferris Faculty Association, 496 US 905, 110 S Ct 2586, 134 LRRM 2368 (1990) Tierney v City of Toledo, 824 F2d 1497, 125 LRRM 3217 (6th Cir, 1987).

The point that the United States Supreme Court has made is that those who receive the benefit of a collective bargaining agreement could be held responsible for paying the costs of obtaining that agreement and administering the agreement.

Nevertheless, the Deerfield Board of Education has had some concerns about an agency shop for a variety of reasons. This has been a point of disagreement between the parties.

After the hearings, the Fact Finder came to the conclusion that this situation required compromise. The bargaining units represented by the Michigan Education Association in Lenawee County, and even those organized units in the Athletic League in which Deerfield participates have agency shop clauses. It therefore would seem that the concept advocated as to an agency shop by the Association should be followed, except that, as will be explained below, in order to arrive at such a compromise it would seem that a three year Agreement would be preferable. This would mean that there would be an Agreement, effective July 1, 1992 and expiring June 30, 1995.

The agency shop provision as proposed by the Association would be effective the last year of the Agreement, namely, on July 1, 1994, and that the provisions concerning persons being required to either join the Association or pay an agency fee apply to those who have already joined the Union or those who become employed after July 1, 1994.

A further compromise is necessary in order to resolve this dispute by modifying the Association's proposal with the Association agreeing to carve out of the bargaining unit and exclude therefrom one secretary classification, namely, the secretary of the high school principal, referred to as the Building Secretary. This will alleviate some of the concern of the Board. In addition, for the duration of their employment with the school district, the following employees will be excluded from being required to either belong to the Association or to pay service fees:

Leona Payne

Carol Cannon

Gaynell Sharrock

Jocene Witt

The parties have presented contract language that will accomplish this purpose within the time frame discussed above. The agency shop provision, attached hereto as Appendix A, plus a change in the recognition clause to accomplish this purpose, which change is attached as Appendix B, have been tentatively agreed to by the parties following fact finding. There has also been a Letter of Understanding signed by the parties, dated June 1, 1993, which also will be incorporated into this Fact Finding Report by reference and is attached hereto as Appendix C. The

Fact Finder therefore will recommend the adoption of Appendices A and B in the parties' contract and the accompanying Letter of Understanding (Appendix C).

DURATION

As already intimated, because of the circumstances necessary to arrive at a Collective Bargaining Agreement, the Agreement shall be a three year agreement commencing July 1, 1992 and expiring June 30, 1994.

WAGES

On the issue of wages, the parties were in dispute as to the comparables. Ability to pay was not an issue. The Association relied on comparables representing districts in Lenawee County which, with the exception of the Hudson School District, would seem to suggest a wage increase above 4% per year. Even the wage increases among the districts in the School Athletic League in which Deerfield participates would suggest the same. The wage increases in that League were:

	<u>92-93</u>	<u>93-94</u>
Britton-Macon	5%	5%
Madison	4%	4%
Morenci	4-4.5%	4-4.5%
Sand Creek	6%	NA
Summerfield	4.6%	4.5%
Whiteford	6%	NA

Now compare this with the wage comparables urged by the Deerfield District for the 1991-92 school year:

DESPA CURRENT PAY COMPARABLES

<u>BUS DRIVERS: Regular Run</u>		<u>Vo-Tech</u>	<u>Extra Trips</u>	
Madison	33.00	Britton	35.16	Sand Creek 9.48
Britton	31.44	Madison	33.00	Britton 8.79

BUS DRIVERS: Regular Run

Deerfield 30.68
Morenci 28.27
Sand Creek 28.51
Summerfield 26.94
Whiteford 23.19

Vo-Tech

Deerfield 31.24
Morenci 29.96
Sand Creek 29.94

Extra Trips

Madison 8.60
Deerfield 8.11
Summerfield 8.05-Drive
7.55-Wait
Morenci 7.34
Whiteford 7.02-2hr.
4.82-2hr

CUSTODIANS:

Head

Summerfield 11.46
Deerfield 9.57
Britton 8.??

Regular

Madison 10.52
Sand Creek 10.52
Summerfield 10.10
Morenci 9.92
Deerfield 9.44
Whiteford 9.07
Britton 8.23

CAFETERIA:

Head Cook

Deerfield 10.07
Sand Creek 8.68

Madison 8.54
Summerfield 7.98
Morenci 7.50
Whiteford 7.09

Cook

Deerfield 9.20
Britton 8.54

Sand Creek 8.38
Madison 8.06
Whiteford 6.06

Helper

Deerfield 8.80
Sand Creek 8.03
Dishwasher 5.34
Britton 7.23
Madison 7.08
Summerfield 4.72

AIDE/CLERK:

Aide

Deerfield 8.80
Morenci 7.73-4.25
Britton 7.23
Madison 7.10
Whiteford 6.77
Summerfield 5.97

Clerk

Deerfield 9.26

BUILDING

SECRETARY:

Deerfield 24,311
Sand Creek 21,689
Whiteford 20,059
Madison 19,390
Summerfield 18,876
Britton 18,307
Morenci 15,597

In order for the Deerfield Schools to continue their comparable position, it would seem that a wage increase of 4% for 1992-93, 4.5% for 1993-94 and 4.5% for 1994-95 would be most appropriate.

If this wage percentage was implemented, then Deerfield would keep its comparative positions among the comparables that the District concedes are appropriate.

In the end, the economic realities are that absent a proven inability to pay, Deerfield would be expected to pay wage increases that are comparable with similarly-situated school districts because if not, then Deerfield would fall behind its historical position as to said comparables.

It is for these reasons that the Fact Finder will recommend a four percent (4%) increase retroactive for the 1992-93 school year across-the-board, a four and one-half percent (4.5%) increase for the 1993-94 school year, and a four and one-half percent (4.5%) increase for the 1994-95 school year.

The wage recommendations that follow are based on the above analysis.

TENTATIVE AGREEMENTS

As a result of discussions with the Fact Finder and the bargaining teams and with the entire Board of Education, the parties have tentatively agreed to a Collective Bargaining Agreement that incorporates the recommendations of the Fact Finder's Report, the tentative Agreement being initialed on June 1, 1993.

RECOMMENDATIONS

1. Duration of the Agreement. The Agreement shall commence July 1, 1992 and expire June 30, 1995 for a three year duration.

2. Agency Shop. The agency shop language shall be as attached as Appendix A and as further amplified by Appendix B, Article I, "Recognition", and including the Letter of Understanding, Appendix C.

3. Wages. Retroactive for the 1992-93 school year commencing July 1, 1992, it is recommended that there be a four percent (4%) across-the-board wage increase for all persons in the bargaining unit. For the 1993-94 school year commencing July 1, 1993, it is recommended that there be a four and one-half percent (4.5%) across-the-board increase for all employees in the bargaining unit. For the 1994-95 school year commencing July 1, 1994, it is recommended that there be a four and one-half percent (4.5%) across-the-board increase for all employees in the bargaining unit.


GEORGE F. ROUMELL, JR.
Fact Finder

June 3, 1993

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Article VI. Agency Shop

Section A. Employees Leona Payne, Carol Cannon, Gaynell Sharrock, and Jolene Witt will have a permanent option to not join DESPA or be obligated by the agency shop provisions of this contract. However, if an employee, listed above, would decide to join DESPA at a latter date, that decision would be permanent.

Section B. Current members, except as noted in Sec A, and all new employees hired after July 1, 1994 to a position covered by this agreement shall within thirty (30) calendar days of their hire by the Employer become members of the union, or in the alternative, shall, as a condition of employment, pay to the Union each month a service fee, in accordance with its policies and procedures.

Section C. Bargaining unit members in accordance with Section B, not joining the association shall pay a Service Fee to the Association as determined in accordance with the MEA Policy and Procedures Regarding Objections to Political-Ideological Expenditures. The remedies set forth in this policy shall be exclusive, and unless and until the procedures set forth therein have been availed of and exhausted, all other administrative and judicial procedures shall be barred.

Section D. Upon written authorization by a bargaining unit member, the employer will deduct the appropriate amount of the dues or service fees from the bargaining unit member's wages. The deductions will be made in equal amounts from the paychecks of the bargaining unit member beginning with the first pay following receipt of the written authorization from the bargaining unit member or the Association and continuing through the last pay period in June of each year. Monies so deducted will be transmitted to the Association, or its designee, no later than twenty (20) days following each deduction.

Section E. If any provision of this Article is deemed invalid under Federal or State Law, said provision shall be modified to comply with the requirements of said Federal or State Law.

Section F. The Association shall indemnify and hold harmless against any and all claims or liabilities, including unemployment compensation, court costs and attorney fees, that arise out of the Employer's compliance with the provisions of this Article.

TA term 6/1/93
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ARTICLE I - RECOGNITION

Section A. Scope. Pursuant to and in accordance with the applicable provisions of Act 379 of the Michigan Public Acts of 1965, as amended, the Employer recognizes the Association as the sole and exclusive collective bargaining representative for the purpose of collective bargaining with respect to wages, hours, and other conditions of employment for the term of this Agreement, for the following described employees of the Employer:

All full-time and regularly scheduled part-time bus drivers, custodial maintenance, food service personnel, secretarial/clerical and aide/papa professional personnel, excluding on call substitutes, the Business Manager, the Transportation/Maintenance Supervisor and all other supervisory and administrative personnel.

Section B. Excluded Position. The position of building secretary, currently held by Marilyn Iott, will be permanently excluded from the recognized positions of the DESPA collective bargaining agreement, as per the Letter of Agreement between DESPA/MEA and the Deefield Public Schools Board of Education signed Tuesday, June 1, 1993.



Deerfield Public Schools

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SUPERINTENDENT
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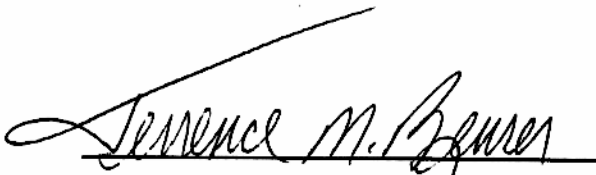
June 1, 1993


Letter of Agreement

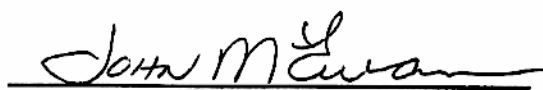
The Deerfield Public Schools Board of Education and the Deerfield Educational Support Personnel Association, MEA/NEA agree that the position of Building Secretary, currently held by Marilyn Iott, will be permanently excluded from the recognized positions of the DESPA collective bargaining agreement.


The Deerfield Public Schools Board of Education and the Deerfield Educational Support Personnel Association, MEA/NEA agree that employees Leona Payne, Carol Cannon, Gaynell Sharrock, and Jolene Witt will have a permanent option to not join DESPA or be obligated by the agency shop provision of the DESPA collective bargaining agreement. However, if an employee, listed above, would decide to join DESPA at a latter date, that decision would be permanent.

This provision will be in effect as long as the named employees are employed by Deerfield Public Schools. ^{1/E}


Terrence Beurer, President
Deerfield Board of Education


Barbara Iott, President
Deerfield Educ. Support Personnel Assoc.


John McEwan, Superintendent
Deerfield Public Schools


Pat Schopmeyer, Uniserv Director
MEA/NEA

"An Acknowledged School of Excellence"