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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

925
IN THE MATTER OF:

DE TOUR AREA SCHOOLS

and

DE TOUR EDUCATION ASSOCIATION

----- Grossman -----

MERC FACT FINDING

CASE NO. D82-F-1388

HEARING OFFICER'S FACT
FINDING REPORT

STATE OF MICHIGAN
BUREAU OF EMPLOYMENT RELATIONS
DETROIT OFFICE

1982 OCT -8 AM 11:11

RECEIVED

While the Fact Finder was selected under the auspices, procedures and processes of the Employment Relations Commission, Fact Finding is provided under the parties' collective bargaining agreement, and it is under this authority and language of Article 19 Section C that this fact finding process was invoked and conducted. At the hearing, both parties made me aware of a fact finding stipulation which they had entered into and would be binding upon my authority. Attached to the Fact Finder's report is a copy of the stipulation of the parties setting forth the conditions under which the fact finding process would be governed.

Thus it is agreed by both parties under the terms of the collective bargaining agreement as well as the stipulation that this fact finding is not to be conducted under provisions set forth in Section 25 of Act 176 of the Public Acts of 1939 nor under the Commission's Rules and Regulations relating to fact finding. Under the terms of the parties stipulation, the Fact Finder is restricted in his authority, he must select the entire proposal of either of the two parties. The Fact Finder is unable

de Tour Area schools

to make a determination on each of the disputed items which position is the more reasonable under the circumstances taken as a whole. Therefore the Fact Finder's determination has to be made considering each of the disputed items and thereafter making his determination based upon a consideration of each of the items in dispute and the parties respective positions and arguments on each of these disputed issues. The parties' Binding Fact Finding process provided in the collective bargaining agreement is the equivalent of Act 312 Interest Arbitration. While Act 312 Interest Arbitration covers and includes only law enforcement and fire department employees, this Fact Finder will be mindful and take into consideration the factors set forth in Section 9 of the Public Employment Relations Act Section 423.239 which provides as follows:

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its finds, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensations, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

ISSUES IN DISPUTE

While the employer characterizes in its brief the fact that there four items in dispute and identifies them as wages and COLA, health insurance coverage, duration of agreement, and binding fact finding as it relates to wages, and the Education Association characterizes the number of disputes in issue as five: duration of agreement, insurance, extra-curricular activity pay schedule, salary including COLA language. The fact finder is convinced that each party agrees that the following items are in dispute: wages and salary, including continuation of cost of living allowance language and extra-curricular activity wage schedule, duration of agreement, health insurance coverage during second year of agreement, and the binding fact finding agreement.

The fact finder will confine his consideration to these matters in dispute.

POSITION OF THE PARTIES ON DISPUTED MATTERS

A. Duration of Agreement:

Employer's position: The employer wants a two year agreement providing for wage reopener in the second year of the agreement. In addition to that, negotiations would be confined to the following item only, the school calendar. The School Board's position on the duration of the contract is that a two year agreement would provide for additional stability under which the parties could operate as well as providing a more stable environment for the teachers to teach and the students to learn. Also, the high cost of negotiating a collective bargaining agreement would not occur in the 1983-84 school year as only two items would be open for discussion. Thus with an eye to minimizing cost and the consumption of time to negotiate a contract, the Board's proposal is for a two year agreement.

Union's position: The Education Association wants a one year agreement. It disagrees with the Board's position that a multi year agreement stabilizes the relationship between the parties. The Education Association points out the fact that even under the Board's proposal the parties would be meeting in the second year and negotiating pursuant to the wage reopener. The parties would be negotiating not only a wage and salary schedule but things such as extra-curricular activity pay schedule and other wage and salary related items. The Union contends there would be no substantial savings of either time and/or money based upon the Board's proposal since there would be negotiations taking place next year. Additionally, the parties would be

negotiating on a school calendar since neither of the parties have agreed upon a calendar for the 1983-84 school year.

B. Health Insurance Coverage.

Employer's position: The School Board wants to have language in the collective bargaining reserving the right of the School Board to select an insurance carrier for the 1983-84 year by providing language affording it an option to have bids submitted by health insurance providers as long as comparable coverage is provided the teachers. The Board's position originally was that they wanted to have that right during the 1982-83 school year and had they had such a right they would have been able to provide comparable insurance coverage under a Blue Cross/Blue Shield "4 Point Plan" at a savings of approximately \$5,000.00. The Board's position is that it is not attempting, now or at any future time, to reduce the coverage the employees are afforded, but is seeking language enabling it to obtain competitive bids for comparing health insurance programs provided to its employees.

Union's position: Determination of the carrier of the health insurance program is a mandatory subject of bargaining which the Union is not prepared to relinquish. The employees presently are afforded the opportunity of selecting amongst several insurance carriers, the employees have opted to have their insurance coverage through MESSA; this wish and desire of the employees should be respected. To allow language in the collective bargaining agreement that reserves the right of the employer to select the carrier through competitive bidding,

involves a large relinquishment of a right relative to a mandatory subject of bargaining of great importance to its members. Parenthetically, the Union contends if the sole concern of the School Board was the cost of the health insurance program, at no time has the School Board suggested any methods of containing these increased costs, such as sharing the cost of the health insurance program. An unstated argument is that this matter need not be resolved if the Union's last offer is accepted, since the School Board's language proposal would only be operative in the second year of the agreement. Under the Union's proposal there would only be an one year agreement.

C. Binding Fact Finding Language.

The language of Article 19 Section C provides for binding fact finding.

ARTICLE XIX

JOINT EXHIBIT 3

NEGOTIATION PROCEDURES

- A. It is contemplated that serious matters not specifically covered by this agreement but of common concern to the parties shall, by mutual consent of both parties, be subject to professional negotiations between them from time to time during the period of this agreement. upon majority request by either party to the other.
- B. By March 1, the parties will begin negotiations for a new agreement covering hours, wages, terms and conditions of employment, and shall continue on a regular basis.
- C. If the parties fail to reach an agreement in any such negotiations, either party may invoke the mediation machinery of the State Labor Mediation Board, or take any other lawful measure it may deem appropriate. The end result of the mediation machinery will be binding fact finding on both parties, subject to the following restrictions:
 - 1. Binding fact finding will occur only after both parties have designated a proposal as their Last Best Offer, said designation to be in writing.
 - 2. The selection of the factfinder will be by mutual consent. If mutual consent cannot be reached then the State will appoint the factfinder.
 - 3. The parties agree that all costs incurred during this process, in securing the services of the factfinder, shall be shared equally by the Board and the DeTour Education Association.

Employer's position: Binding fact finding or interest arbitration is not a mandatory subject of bargaining, but is a permissive subject of bargaining. The law is clear on this matter. It is also clear that while parties can negotiate relative to permissive subjects of bargaining they cannot negotiate to impasse on such an issue. Unless the parties both agree to binding fact finding language, the process will not be part of the contract language. Further, the procedure of fact finding was not intended to be binding, the Michigan Employment Relations Act provides for a fact finding process. The process is not binding on either party, and all fact finding requires is a report and recommendations from the fact finder. The School Board believes that binding fact finding has been a hinderance rather than an aide to the collective bargaining process.

Union's position: Binding fact finding has been in the parties collective bargaining agreement since 1977. The parties negotiated the language into the collective bargaining agreement in a voluntary manner. Since 1977 the process of binding fact finding has worked. Under the terms of the binding fact finding provisions and the parties' stipulation, each party is of necessity required to exercise restraint in making their last final offer as reasonable as possible, since the fact finding provisions require the parties' last best offer be considered and along with the parties' stipulation requiring the fact finder select from the last proposal of each of the parties in their entirety. Each party runs a grave risk by adopting an extreme

final position that the fact finder will select the final binding position of the opposite party.

The Union raises in its brief the fact that the permissive nature of binding fact finding was never raised during the negotiating process. The Union believes it has been placed at a grave disadvantage to have to encounter this argument for the first time during the fact finding hearing.

D. Wage and Salary, Including Cost of Living and Extra-Curricular Activity Pay.

I will the discuss the parties' positions on each of these three wage and salary related items, thereafter, I will discuss the basis for the parties' position, the facts and information that they are relying upon.

1. Extra-curricular activity pay scale.

School Board's position: The extra-curricular activity pay scale shall remain the same as it was in the 1981-82 contract.

Union's position: The extra-curricular pay schedule for teachers shall be increased by five percent from the current 1981-82 schedule rate.

DETOUR EDUCATION ASSOCIATION
PROPOSAL

EXTRA-CURRICULAR SALARY SCHEDULE
1982-83

	<u>E.A.</u>	<u>BD</u>
Varsity Basketball	\$1,248	\$1,189
Jr. Varsity Basketball	768	732
Freshmen Basketball	337	321
Varsity Football	1,248	1,189
Assistant Football	768	732
Junior Varsity Football	688	655
Track	709	675
Junior High Track	188	179
Cross-Country	412	392
Baseball	768	732
Junior High Track	169	161
Volleyball - Varsity and Junior Varsity	1,019	970
Junior High Basketball	689	656
Girl's Athletic Director	404	385
<u>MISCELLANEOUS</u>		
Music (Marching Band)	768	732
Cheerleader Advisor	756	720
Yearbook Advisor	399	379
Driver's Education	9.45/hr	9.00/hr
<u>CLASS ADVISORS</u>		
9, 10, 11 and 12	204	194
	<u>11,642</u>	<u>10,993</u>

Note: E.A. offer reflects 5% increase - \$649 increase
Board offer reflects a freeze at 1981-82

2. Cost of living allowance.

School Board's position: The language in the collective bargaining agreement relative to cost of living allowance should be deleted from the contract so that there shall be no such provision.

Union's position: The cost of living allowance language in the contract shall be retained.

3. Wages and salary.

School Board's position: The 1981-82 wage and salary schedule of the teachers shall be maintained. Each teacher shall be entitled to one of the following modes of obtaining an increase over their 1981-82 salary. Vertical movement along the 1981-82 salary schedule for any teacher that is entitled and eligible to move along the vertical longevity scale. A five percent wage increase for any teacher who is at the top of their scale so that they would not be entitled or eligible to move vertically along the scale. Any teacher who is at a longevity level which would not entitle them to move vertically along the scale during the 1982-83 year shall receive an increase of \$200.00 over and above the salary they received during 1981-82. This increase shall be a non-recurring increase for the 1982-83 year only. Based upon the three alternative choices, all teachers would receive a wage increase over and above their 1981-82 salary schedule. Finally a wage reopener would be provided for the second year of the contract.

Union's position: The 1981-82 salary schedule shall be

adjusted in the following manner: Step 0 through 5 will be increased by five percent, Steps 6 through 14 will be increased by four percent, the overall wage-salary adjustment comes to 4.38 percent.

The Board of Education's salary schedule for teachers 1982-83 and what each teacher would receive in accordance with the Board of Education's proposal for the 1982-83 years are as follows:

EMPLOYER'S EXHIBIT 29A

DETOUR BOARD OF EDUCATION

SALARY SCHEDULE

1982-83

<u>STEP</u>	<u>YEAR</u>	<u>BA</u>	<u>BA + 20</u>	<u>MA</u>	<u>MA + 20</u>
0	1	11,189	11,379	11,972	12,066
1	2	11,748	11,947	12,570	12,669
2	3	12,335	12,545	13,198	13,302
3	4	12,952	13,172	13,858	13,967
4	5	13,600	13,831	14,552	14,666
5	6	14,280	14,522	15,279	15,399
6	7	14,851	15,103	15,890	16,015
7	8	15,445	15,707	16,526	16,656
8	9	16,063	16,336	17,187	17,322
9	10	16,705	16,989	17,875	18,015
10	11-12	17,374	17,669	18,590	18,735
11	13-14	18,069	18,375	19,333	19,485
12	15-16-17	18,791	19,111	20,106	20,264
13	18-19-20	19,543	19,875	20,911	21,075
14	Over 20	20,325	20,670	21,747	21,918

Criteria for placement on the above schedule

- A. Up to (1) one additional step
- B. A 5% increase for persons not moving on step or already at the top of the salary schedule.
- C. Any teacher not receiving an increase in gross salary over 1981-82 based on those conditions outlined in (Part A & B) shall receive an additional \$200.00 which shall be non-accruing and be for 1982-83 only.

Average Teacher Salary for 1982-83 using above schedule - \$19,328.00

EMPLOYER'S EXHIBIT 29B

DETOUR BOARD OF EDUCATION

1982-83

SALARY COSTS

<u>NAME</u>	<u>SALARY</u>
Jeannine L. Bailey	\$ 6,168.00
Kimberly A. Bailey	8,429.00
LaVerne C. Byrd	19,493.75
Barbara A. Cloudman	16,336.00
Gary W. Cloudman	16,989.00
Sandra J. Fairchild	19,719.50
Shula F. Giddens	22,834.00
David J. Kohring	18,972.45
Darrel F. Ledy	22,156.55
Sandra E. Ledy	8,027.00
Angela M. Leonard	21,957.00
Billie B. Mannisto	19,333.00
David F. Miller	20,266.55
Theodore A. Potoczak	22,156.55
Frank J. Sasso	21,111.00
Barbara A. Schmitigal	20,067.00
Mynor W. Seaman, Jr.	21,903.50
Shirley E. Stevens	16,336.00
Martha L. Tassier	16,705.00
Blaine A. Tischer	19,172.45
William M. Tracy	20,300.00
John H. Wilkie	20,869.00

1982-83 SALARIES

\$ 399,302.30

Under the Education Association's wage and salary proposal the 1982-83 salary schedule as well as what each of the teachers would be receiving would be as follows:

EMPLOYER'S EXHIBIT 28A

DETOUR EDUCATION ASSOCIATION

SALARY SCHEDULE

1982-83

<u>STEP</u>	<u>BA</u>	<u>BA + 20</u>	<u>MA</u>	<u>MA + 20</u>
0	11,675	11,875	12,492	12,609
1	12,259	12,469	13,117	13,239
2	12,871	13,092	13,772	13,901
3	13,515	13,747	14,461	14,596
4	14,191	14,434	15,184	15,326
5	14,901	15,156	15,943	16,093
6	15,497	15,762	16,581	16,736
7	16,116	16,393	17,244	17,406
8	16,761	17,048	17,934	18,102
9	17,431	17,730	18,651	18,826
10	18,129	18,439	19,397	19,579
11	18,854	19,177	20,173	20,362
12	19,608	19,944	20,980	21,177
13	20,392	20,742	21,820	22,024
14	21,208	21,571	22,692	22,905

EMPLOYER'S EXHIBIT 28B

DETOUR EDUCATION ASSOCIATION

1982-83

SALARY COSTS

<u>NAME</u>	<u>SALARY</u>	<u>+</u>	<u>COLA</u>	<u>= TOTAL</u>
Jeannine L. Bailey	\$ 6,167.50		\$ 185.03	\$ 6,352.53
Kimberly A. Bailey	8,795.37		263.86	9,059.23
LaVerne C. Byrd	19,944.00		598.32	20,542.32
Barbara J. Cloudman	17,048.00		511.44	17,559.44
Gary W. Cloudman	17,730.00		531.90	18,261.90
Sandra J. Fairchild	20,173.00		605.19	20,778.19
Shula F. Giddens	22,692.00		1,134.60	23,826.60
David J. Kohring	18,854.00		942.70	19,796.70
Darrel F. Ledy	22,692.00		680.76	23,372.76
Sandra E. Ledy	8,376.40		418.82	8,795.22
Angela M. Leonard	21,820.00		1,091.00	22,911.00
Billie B. Mannisto	20,173.00		605.19	20,778.19
David F. Miller	19,944.00		997.20	20,941.20
Theodore A. Potoczak	22,692.00		680.76	23,372.76
Frank J. Sasso	20,980.00		1,049.00	22,029.00
Barbara A. Schmitigal	19,944.00		997.20	20,941.20
Mynor W. Seaman, Jr.	21,571.00		1,078.55	22,649.55
Shirley E. Stevens	17,048.00		511.44	17,559.44
Martha L. Tassier	17,431.00		522.93	17,953.93
Blaine A. Tischer	19,608.00		588.24	20,196.24
William M. Tracy	20,173.00		1,008.65	21,181.65
John H. Wilkie	20,742.00		1,037.10	21,779.10
 1982-83 Salaries	 \$ 404,598.27		 \$ 16,039.88	 420,638

The basis of the Employer's position with respect to the wage and salary items are as follows: The School Board's anticipated revenues for the 1982-83 year are \$1,104,590.00 and this includes a cash carry over for the 1981-82 of \$30,365.00. The School Board's estimate of costs and expenditures based upon the economic proposal it made to the teachers, including all other costs and expenditures that can be anticipated in running the school system would come to \$1,104,516.35, included therein is \$399,302.30 for wages and salaries of its teaching staff, this would leave a carry over for the following year of \$73.65. The cost of the Education Association's wage proposals when coupled with the other costs of operating the entire school system would come to \$1,125,874.11, included therein are wage-salary and cost of living allowance of \$420,638.00. This would leave an anticipated budget deficit of \$21,358.00; if the \$649.00 additional cost of the Union's proposed extra-curricular activity pay schedule is added the deficit would be \$22,007.00. The School Board has reviewed its budget very carefully and closely and is of the belief and opinion that there are no frills or wasteful items or water in its budget. The School Board is unable to operate under a deficit as the laws of the State of Michigan do not allow school districts to do so.

The School Board maintains that the critical figures to look at are not what the entry level pay of the teaching staff is but what the average wages and salary earned by its teaching staff. Based upon this type of comparsion, the School District

favorably compares with the surrounding school districts of Region 16. The teaching staff is very stable and has been here a long time and many of the teachers have master degrees or a number of credit hours beyond the bachelor's degree; thus the critical comparison should be the average salary level of teachers of the De Tour School District in comparison with school districts surrounding it. The 1982-83 budget reflects an increase in its equated full time teaching staff over the 1981-82 budget 7/10ths of a teacher. The reasons for this are the School Board's effort to become accredited by the University of Michigan.

Additionally, the economic conditions of the State of Michigan as well as the Upper Peninsula and particularly Chippewa County are such that dictate prudence in all matters concerned with money. Further, the fact that the Drummond Island Quarry is virtually closed and the economic well being of this area is very closely tied to it. There are large numbers of employees who are tax payers in the community that have been laid off.

Other districts in the area have made wage concessions; and thus it is not a huge imposition to require of the School Board's teachers to accept a moderate increase.

The School Board's position is similar on the issues of continuation of the cost of living allowance language in the existing contract as well as providing a five percent increase in the extra-curricular activity pay scale. The School Board lacks the ability to pay any cost of living allowance and no such amount was provided for or allotted in its current operating

budget. The cost of living allowance language could generate an additional \$16,000.00 in expenditures for teachers' salaries that the School Board does not have nor does it have the means of obtaining. Therefore, the School Board's position is that the cost of living allowance language should be deleted from the contract because it is an expenditure that it cannot afford to maintain. For the same reasons the School Board is unable to increase the extra-curricular activity pay scale by any amount over and above that which was provided in the 1981-82 contract. To allow for such an increase, would cause the School Board's budget to be out of balance and put it into a deficit position.

The School Board's economic proposal is both an honest and realistic effort to keep its expenditures within the anticipated revenues. There is no room for any additional economic costs, including wages and salaries, that the Union is seeking.

A wage reopener for the 1983-84 year will allow the parties to sit down and negotiate salary and wage related increases for the ensuing 1983-84 year; this will be done at a time more proximate to the 1983-84 school year. At that time, both parties will be in a much better position to assess the economic conditions of the community for the 1983-84 school year.

Basis of the Union's position: The wage and salary increases sought, including retention of the cost of living allowance language as well as a five percent increase in the extra-curricular activity pay scale, is both prudent and reasonable under the current and existing financial situation.

The fact is, the School Board has additional revenues for the 1982-83 school year. Part of this has been generated because of an increase in state equalized value of property in this area, the balance of the increase is due to more than \$30,000.00 that the School Board is carrying over from the 1981-82 school year. The Union maintains that there is approximately \$57,358.00 of new money available over and above the 1981-82 school year budget. The Union contends that in 1981-82 \$1,085,251.00 was generated by 26 mills. One mill specifically earmarked for roof repairs and sewer hookup and that one mill represented \$38,019.00. After subtracting the \$38,019.00 from \$1,085,251.00 leaves a balance of \$1,047,232.00. After subtracting from the \$1,104,590.00 budget for the 1982-83 school year the amount of \$1,047,232.00, the operational budget for 1981-82, leaves a balance of \$57,358.00.

The Union maintains that its requests are reasonable and comparable to those communities in the area. It points out that Les Cheneaux received a 4 percent increase, Engadine a 4.19 percent increase and Pickford a 5.2 percent increase. The Union contends the teachers should not be penalized in terms of wage and salary increases because the School Board wants to improve the caliber of the teaching program by restoring and instituting and implementing new educational programs. If the School Board desires to increase the full time equivalency teachers for the 1982-83 school year by 7/10ths of one full time teacher, the cost increase should not be charged against any wage and salary settlement. In the past when the School Board elected to eliminate certain teaching programs thereby reducing the status

of certain teachers from full to part time, those savings were not available nor considered for teacher salary increases; thus the increased cost of implementing and/or restoring programs should not be charged against monies available for salary and wage increases.

The Union's position is that the cost of living allowance language should be retained in the existing contract. The cost of living allowance improvements are not automatic; they are triggered by increases in the cost of living. The cost of living must increase by at least 3 percent a year for the teacher to receive the cost of living allowance. There is a maximum cap provided for in the collective bargaining agreement. The cost of living allowances for each year are not rolled into the teachers' salary base. The cost of living allowance is not carried over from one year to the next in terms of having a "float". Each year's cost of living allowance is independant and stands by itself. The maximum cost of living allowance increase for the 1982-83 school year would come to \$16,039.88. The parties negotiated this language into the collective bargaining agreement in an attempt to provide the teachers with a hedge against certain inflationary pressures. To obtain and retain such a provision in the collective bargaining agreement, certain trade-offs have been made on the part of the teachers. To permit excision of the cost of living allowance provision in the contract at this time and without any quid pro quo in return would be destructive of the collective bargaining process. The excising of such a term and condition of employment should only

be accomplished through the collective bargaining and negotiation process.

The Union's position is that the extra-curricular activity pay schedule should be increased by a flat 5 percent. Such an increase would represent an increase in expenditure of \$649.00 over and above the 1981-82 extra-curricular activity pay scale. Its position is based upon the fact that the pay scale should be increased along with the salaries and wages of the teachers. Many of the surrounding school districts' extra-curricular activity pay schedules are geared to and based upon a percentage of the bachelor of arts salary pay scale. Thus with an increase of the pay scale the extra-curricular activity pay schedule automatically increases. This is not the case with the School Board's extra-curricular activity pay scale. Thus it is necessary to increase the pay scale for extra-curricular activities to keep it on parity with other school districts in the region. The Union pointed out that the Sault Ste. Marie, St. Ignace, Les Cheneaux, Engadine, Brimley school districts each pay extra-curricular activity based upon a percentage of the salary schedule; thus with an increase in the salary base the extra-curricular activity amount automatically goes up. The Union also pointed out that Big Bay De Noc extra-curricular activity salary schedule was increased by a dollar amount in each of the years 82-83, 83-84 and 84-84.

The Union points out that over the years the School Board has shifted its emphasis and direction in its expenditure of school funds. The Union maintains that the teachers are

receiving a smaller percentage of the overall operating budget over the past several years. The Union maintains the School District has shifted its emphasis and priority away from teachers' salary expenditures to things such as maintaining the buildings and grounds of the School Board. The decrease in teachers' salary expenditures was occurring all during the time that the School Board's total sources of revenues were increasing.

GENERAL COMMENTS

The Fact Finder wishes to point out to the parties that his decision would have been immeasurably easier if the parties had permitted the Fact Finder to decide each of the disputed issues individually based upon each party's last best offer on those issues. However, the parties have agreed pursuant to their executed stipulation that the Fact Finder must select the entire last offer dispute package of either the School Board or the Union.

As a personal observation of this Fact Finder neither the language of the collective bargaining agreement Article 19 Section C, concerning binding fact finding and/or Act 312, interest arbitration, require such a result. However, since the parties have agreed, the arbitrator must select from the final offer of either the School Board or the Union, this Fact Finder's authority has been determined in this regard. These comments and observations are only made for future consideration.

DISCUSSION AND DETERMINATION OF ISSUES IN DISPUTE

Included as part of this Fact Finder's determination is

the executed Fact Finding stipulation of the parties. This Fact Finder concludes and determines and adopts the offer of the Education Association. The basis for the Fact Finder's conclusion on an issue by issue basis will be discussed hereafter seriatim.

1. Duration of Collective Bargaining Agreement.

The Fact Finder concludes there is merit to the Union's position that a collective bargaining agreement of one year duration would not be disruptive of stability, expensive in terms of cost of money and time spent negotiating in 1983. This is true especially in light of the proposal that the School Board made relative to a collective bargaining agreement whose duration would be two years. The School Board's proposal included a wage reopener for the second year; in addition, negotiations would be required relative to the school calendar, as well as discussion if not negotiations as to comparability of health insurance coverage under the Board's proposal which would include language allowing it to competitively bid comparable health insurance coverage. Under these circumstances, the Union's position and observations are more likely to be correct. In light of the above, and my subsequent discussion on the cost of living allowance provision, I conclude and find the Union's position on the collective bargaining agreement of one year duration is the more prudent and acceptable alternative under the circumstances and therefore adopt it.

2. Health Insurance Coverage.

In light of the above discussion on duration of

collective bargaining agreement, I conclude, find and adopt the position of the Union on the question of health insurance coverage. In so doing, I want to point out that this Fact Finder's determination in no way precludes the parties from negotiating on that same subject matter in the ensuing collective bargaining negotiations next year. Under the School Board's proposal language would have been included in the collective bargaining agreement permitting the School Board to competitively bid comparable health insurance coverage in the second year of the collective bargaining agreement which would be for the 1983-84 school year. In light of the fact that I have concluded that there will be a one year collective bargaining agreement, the School Board is not precluded from negotiating with respect to its ability to competitively bid comparable health insurance coverage. The selection and determination of the health insurance provider clearly is a mandatory subject of bargaining. Also, the question of whom the health insurance provider is certainly a matter of great importance to the teachers. However, the teachers should not lose sight of the fact that it is the quality of the coverage and its cost which is and must be of utmost concern to the parties. The School Board should not be unnecessarily hamstrung in obtaining the best possible price for comparable coverage.

The resolution of this mandatory subject matter of bargaining, the selection of the insurance provider, is best left to the collective bargaining process. There the School Board will have the opportunity to demonstrate to the Union and its

negotiating team the comparability and equivalency of coverage, ease of use and administration of the program; the Union's negotiating team should be flexible in its approach to recognize and permit the School Board to effectuate significant cost savings upon a demonstration of comparability of coverage.

3. Binding Fact Finding.

The School Board is absolutely correct in its analysis that the binding fact finding provision contained in Article 19 Section C really is interest arbitration. Likewise, the School Board correctly identifies interest arbitration as a permissive subject matter in collective bargaining; its observation is correct in that the law does not permit nor allow the parties to bargain to impasse on permissive subject matters of collective bargaining. However, this analysis of the state of the law on the subject matter does not dispose of the disputed issue. In the instant case, we have language in the collective bargaining agreement in which the parties had previously negotiated providing for binding fact finding. The language has been in the collective bargaining agreement since 1977. The law is equally clear on permissive subject matters of bargaining that have been negotiated into a collective bargaining agreement. In Allied Chemical Workers of America Local Union No. 1 vs Pittsburgh Plate Glass Co., 404 U.S. 157 (1971) the Supreme Court concluded inclusion of a permissive subject matter into a contract does not thereafter transform the permissive subject matter into a mandatory subject of bargaining. The consequences of such conclusion is that neither party can insist in subsequent

negotiations to its continued inclusion in the collective bargaining agreement to a point of impasse. See also NLRB v Greensboro Printing Pressmen and Assistants Union Local No. 319, 549 F.2d 308 (4th Cir 1977); NLRB v Columbus Printing Pressman, 543 F.2d 1161 (5th Cir 1976) each of these cases involve an interest arbitration provision in a collective bargaining agreement for a number of years. The Employer would not agree to its continued inclusion during the negotiations of a new contract. The Union insisted to impasse upon the inclusion of the interest arbitration term. The Employers filed unfair labor practice charges over attempting to bargain to impasse over a permissive subject matter of negotiations. In each instance the Union was found to have not bargained in good faith because they insisted upon bargaining to impasse over a permissive subject of bargaining.

This is the state of the law on permissive subjects of bargaining. Therefore, I must conclude the binding fact finding provision in the existing contract is a permissive subject of bargaining, I found it synonymous to interest arbitration. Therefore, the Union could not have insisted to the point of impasse on its continuance in the collective bargaining agreement. Thus, the inescapable conclusion which must follow is that the issue of the inclusion of the binding fact finding provision is not and cannot be before me since the Union could not have insisted to the point of impasse upon its inclusion in this current negotiation. Therefore I conclude and find this provision will not be a part of the collective bargaining

agreement since the School Board has not agreed to its continuance in the collective bargaining agreement.

My authority as Fact Finder cannot supercede the recognized law in the field of employer-employee relations. The Fact Finder cannot turn a permissive subject matter of bargaining into a mandatory subject of bargaining; by the same token I cannot determine inclusion into the parties' collective bargaining of a permissive subject matter of bargaining where the parties have negotiated to the point of impasse on that permissive term. Thus, my conclusion relative to the issue of binding fact finding is that this issue can not be before me since the Union could not have bargained to impasse over the continued inclusion of the binding fact finding provision. With the declaration of impasse on the parties' part, that issue, binding fact finding, fell from those remaining disputed issues since only mandatory subjects of bargaining can be bargained to impasse; it really was never before me because under Article 19 Section C I am determining those disputed issues at impasse which under the law has to be mandatory subjects of bargaining.

D. Wage, Salary, Extra-Curricular Activity Pay Scale and Cost of Living Allowance Provision.

The Fact Finder concludes, finds and adopts the position of the Union on the issue of wage and salary, increase in the extra-curricular activity pay schedule, and the inclusion of the cost of living language in the contract. Initially, the Fact Finder makes this observation to the parties, the all or nothing

approach adopted by the parties by the execution of the stipulation requiring the Fact Finder to select in its entirety either of the two parties position thereby causing the total rejection of the other prevented the Fact Finder from selecting and determining on a issue by issue basis the respective position of each of the parties. Further, this Fact Finder is mindful of the factors that must be considered and weighed in arriving at this determination. The factors set forth in Section 9 of Act 312 MCL 423.239 have been weighed, considered and taken into account.

At the outset, the Fact Finder is aware that by adopting the position of the Union, the School Board's budget is projecting a deficit amount. However, the budget is just a projection of costs of the School Board. The budget which the School Board relied upon was a proposed budget; an earlier budget of the School Board was adopted for the 1982-83 school year. Since the adoption of the earlier budget, the School Board has prepared the later proposed budget. The amounts budgeted by the School Board do reflect as contended by the Union a continued definite shifting of budgetary priorities away from the school teachers to other costs and expenditures of the School Board. I am persuaded by the presentation and arguments of the Union that the School Board is allocating a smaller and smaller percentage of its overall budget to teachers' salaries. The percentage allocated to teachers' salaries has continued to become a smaller percentage of the total operating budget over the last ten year period. The reduction in percentage of budget allocated for

teacher salaries during this period of time parallels an increase in the operating revenues of the School Board, therefore, in order for the School Board to maintain a balanced operating budget, it might have to reassess and re-evaluate some of the expenditures that it was intending to undertake during this school year.

I am mindful of the School Board's argument that the economy of Michigan and more particularly the economy of Chippewa County are in a rather poor state of affairs. However, the economy of Michigan and Chippewa County were not healthy during the school year 1981-82, and the end of that school year, the School Board had a carry over, a plus amount of over \$30,000.00 in which to carry over into the 1982-83 school year. The \$30,000.00 carry over plus the additional monies generated by the increase in state equalized value of property make available additional dollars for the School Board's operating budget. Therefore under all the circumstances, the School Board should reassess and re-evaluate items in its proposed budget of 1982-83 and assign a higher priority to the teachers' salaries than it originally was prepared to do.

The Fact Finder is persuaded by the argument and contention of the Union that a portion of the increase dollars allocated for teaching salaries is to cover an additional 7/10ths of one full time equated teacher. The Union points out that when full time teachers were reduced in status to part time teachers savings effectuated by such a reduction in status and therefore pay was not passed on to the remaining teachers in terms of

additional monies available for salaries; therefore, the converse should also be true. The monies available for salary increases for teachers should not be impinged because the School Board has determined to increase the number of full time teacher equivalents. Likewise, the fact that the School Board is now striving to obtain accreditation from the University of Michigan and in so doing is undertaking new programs; the cost of the programs should not be charged against any monies available for teacher increases.

In arriving at my determination, I have taken into consideration settlements of school districts in Region 16, De Tour's region. I am also aware of the fact that certain School Districts froze their wages. An examination of the Rudyard area schools salary schedule which was frozen at the 1981-82 level reveals that it provides a higher salary schedule than the proposed salary schedule of the De Tour Education Association. It has been pointed out in the brief of the School Board that Sault Ste. Marie has made concessions in its negotiated collective bargaining agreement. The concessions are not identified, thus it is difficult to take them into consideration. However, I want to point out that the salary schedule of Sault Ste. Marie for the 1982-83 is considerably above that sought by the Union. In comparing the salary schedules of Les Cheneaux and Pickford, two districts which recently settled in Region 16, I conclude and find that their salary schedules are comparable to the one proposed by the De Tour Education Association.

I am persuaded that the extra-curricular activity pay

scale should be adjusted upwards to reflect an increase. Many of the School Districts in Region 16 provide a percentage tied to the bachelor degree pay scale for extra-curricular school activities. Thus, whenever the pay scale base of the bachelor degree is increased, the pay received for engaging in extra-curricular activities is increased. This is not the case in De Tour; De Tour has a extra-curricular activity pay scale. Thus, if adjustments are to be effectuated, the pay scale has to be increased. The five percent increase proposed by the Union which is adopted by the Fact Finder will increase the cost of extra-curricular activities by \$649.00 over and above that which was paid for those activities under the 1981-82 extra-curricular pay activity scale. Under the circumstances, the amount of increase is both moderate and justifiable. Those school districts providing a percentage increase were Sault Ste. Marie, St. Ignace, Les Cheneaux, Engadine, Brimley. One school district, Big Bay De Noc, has a pay scale and its pay scale reflect increases in each of the years.

The parties' collective agreement provides a cost of living allowance provision. The provision has been in the parties' contract for a period of time. COLA is a mandatory subject of bargaining. Once a mandatory provision is in the parties' collective bargaining agreement, it continues in unless and until the parties agree to negotiate it out. The Fact Finder is mindful of the fact that in order to obtain the inclusion of such a provision in the collective bargaining agreement, there was and has been quid pro quo for its inclusion and retention in

the collective bargaining agreements. The Fact Finder should not be used in this situation to accomplish that which the School Board was unable to accomplish during negotiations, that is the deletion of the cost of living allowance provision. Both parties originally agreed to include a cost of living provision in the collective bargaining agreement during the contract negotiations; if the cost of living allowance is to be deleted from the parties' contract it should be done through the process of the parties' collective bargaining. In arriving at my determination, I am mindful of the fact that that cost of living allowance provision is not automatic it has to be triggered by increases in the cost of living in excess of three percent; there is a cap on the cost of living set forth in the provision. Once the cost of living allowance is paid pursuant to the terms of the collective bargaining agreement, it is not built into the succeeding years base salary of the teachers, nor is it maintained and established as a float to be paid on a yearly basis in addition to the teachers' base salary. Each time that the cost of living allowance is paid pursuant to the terms of the contract, it is a one shot deal for the particular year in question. During the 1982-83 year the maximum amount of cost of living allowance that the School District could pay would be \$16,039.88. This amount represents clearly the largest percentage of what the School Board has characterized as the deficit that would occur if the De Tour Education Association's wage and salary proposal were adopted. However, as I pointed out previously, the cost of living allowance is not automatic it has to be triggered by

increases in inflation. More importantly, having accepted the Union's position that the School Board over the past several years has been allocating a smaller percentage of its overall operating budget for teachers' salaries and shifted its priority away from teachers' salaries to other items, I conclude and find that the retention of the cost of living allowance language in the contract is reasonable and justifiable under all the circumstances.

Based upon the foregoing and the record as whole, I conclude and find and adopt the wage and salary proposal of the Education Association. In making this finding and adopting the Education Association's position I have considered all the factors set forth in Section 9 of Act 312 and further conclude and find that the School Board does have the ability and does have the money for the various wage and salary proposals sought by the Union. I have considered and compared various school districts that are part of Region 16 and conclude and find that the wage and salary proposals of the Union are comparable in terms of both settlements achieved in other school districts in Region 16 and additionally the comparative level that the Education Association's proposal would place De Tour's teachers vis a vis teachers in other Region 16 school districts.

SUMMARY

The Fact Finder has sought to respond to the exigencies of the situation based upon the fact that I was restricted by the parties' stipulation which enabled me to select from the entire package of issues in dispute of one party or the other I have

carefully considered the arguments and positions of each of the parties as well as the criteria set forth in Section 9 of Act 312. In adopting the Education Association's position on the duration of a contract of one year, and its wage and salary proposals including the retention of the cost of living allowance language as well as the increase in the extra-curricular activity pay schedule, I have found them to be reasonable, supportable and affordable. By accepting the Education Association's proposal on an one year duration, it became unnecessary for me to make any decision with respect to health insurance coverage as the School Board's proposal only went to the second year of the contract it proposed. Since there will be no second year to this collective bargaining agreement, it became unnecessary to resolve the matter raised by the School Board's desire to have language included in the contract permitting it to competitively bid health insurance coverage that was comparable. Finally, the question of the binding fact finding provision was never really before me in the light of the state of the law that permissive subjects of bargaining cannot be bargained to impasse. Since binding fact finding is a permissive subject of bargaining and the employer did not agree to its continued retention in the collective bargaining agreement, the Union could not insist to point of impasse on its continuation in the collective bargaining agreement. To invoke the mediation and fact finding process, there is an acknowledgement on both parties' part that they are at impasse on the issues that are still in dispute. With a permissive subject of bargaining, this could not occur, therefore

the provision will not be a part of the new collective bargaining agreement; not because I decided it one way or another but as a matter of law impasse can only be reached on mandatory subjects of bargaining. Since the Union could not insist on the continued inclusion of binding fact finding to the point of impasse, it was dropped before impasse was reached, and therefore never attained a disputed item status in the Union's last and best offer.

Dated: October 5 , 1982.


Hiram S. Grossman
Fact Finder

FACTFINDING STIPULATION

- 1) 1981-82 Contract language extended including stipulated T.A.'s and increment activated on August 30, 1982.
- 2) Both parties agree factfinder will ^{Choose the ENTIRE} decide ~~between the~~ package proposal of ~~either party~~ ^{one} ~~of the other.~~
- 3) Briefs will be filed if either party desires within 7 days ^{following} the hearing and both parties will request that an expedited report be issued within 20 days of the hearing.
- 4) All issues will be retroactive to July 1, 1982.

Association: SMW
Board: OM 63
date: 8-26-82