

1/6/79 FF

926

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

DETOUR AREA PUBLIC SCHOOLS

MERC NO. G78-F926

and

DETOUR EDUCATION ASSOCIATION

GEORGE E. GULLEN, JR.
Fact Finder

FACT FINDER'S REPORT

On October 20, 1978 the DeTour Education Association made application to the Michigan Employment Relations Commission for fact finding. On November 16, 1978 the commission appointed George E. Gullen, Jr. as its hearing officer to conduct a fact finding hearing pursuant to Section 25 of Act 176 of the Public Acts of 1939, and to issue a report with recommendations with respect to the matters in disagreement between the parties.

Hearing was held in this matter on December 14, 1978 at Sault Ste Marie, Michigan. Representing the Board of Education was Arden Harper, Superintendent. Representing the Education Association were Lyle Painter, M.E.A. Uniserv. Director and Dennis Zyskowski,

G.L.C.B.C. Appearances were made by:

Dr. Richard Giddens
Blaine Bailey
Richard Walker
Clayton Ledy
Bill Tracy
Kathleen S. Gardiner

Martha L. Tassier
Blaine Tischer
Angela Leonard
Deborah J. Tippins
Jeannine L. Bailey

BACKGROUND

The DeTour Area Public Schools District, located in Chippewa County, has a current enrollment of approximately 430 students with a faculty of 24 5/6 teachers represented by the DeTour Education Association (M.E.A.)

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A master agreement entered into by the parties on July 1, 1977 terminated on June 30, 1978. The Board of Education (hereinafter the Board) and the Education Association (hereinafter the Association) have engaged in negotiations for the past nine months in an attempt to reach an agreement covering the 1978-79 and 1979-80 school years.

Subsequent to mediation and non-ratification of a tentative agreement, each party submitted last best offers to binding fact finding. Per agreement of the parties between themselves, both have requested that the fact finder choose as between the two last best offers that package which in his judgment is most fair and reasonable under the circumstances. Although the fact finder concludes that some of the proposals in each of the packages is more reasonable than the other party's, he is constrained by the agreement of the parties to choose the one package that, overall, is deemed most equitable.

ISSUES

- I. Management Rights (Article III)
- II. Insurance Benefits (Article XV)
- III. Duration of Agreement (Article XXVII)
- IV. Professional Compensation (Article XXIV)

DISCUSSION

I. Management Rights

The Association proposes a change in the management rights provision in the 1977-78 master agreement. The Board proposes maintenance of the 1977-78 language.

The 1977-78 language is as follows:

"The Association shall (SIC) identify and save harmless the Board against any claims, demands, suits and other forms of liability that may arise by reason of the Board complying with the provisions of this Agreement. If any article or section of this contract or if any riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance

with or enforcement of any article or section should be restrained, the Association shall hold the Board harmless against any claims, demands, suits and other forms of liability resulting from such action."

The Association would eliminate the current language and replace it with the following:

"If any Article or Section of this contract or if any riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained, then that Section shall be held null and void, with the Board and the Association making every effort to renegotiate that Section to be in compliance with the law."

The Board interprets its language as providing that the Board will be held blameless by the Association for compliance with the agreement and if any provision is rendered null and void or compliance enjoined by action of law. Their rationale is that since the Board is obligated to bargain in good faith, it should not be placed in jeopardy for actions taken in good faith in implementing the agreement.

The Association contends that the Board language places full responsibility for any violation of the law upon the Association and that both parties should share in such liability as "dual owners" of the provisions of the agreement.

It is the opinion of the fact finder that the language proposed by the Association is preferable to that contained in the 1977-78 contract. Regardless of the terms of the contract, it is an understanding of both parties with mutuality of obligations and rights. Both must assume the risks of illegality and unenforceability. In fact, such mutuality of risk may exist by operation of law regardless of the expressed intentions of the parties.

On the whole, however, the issue is not of great substance in light of the nature of the agreement involved.

II. Insurance Benefits

While each party has included insurance benefits as an issue in its last best offer, it is apparant that continuation of the 1977-78 language is proposed by both.

The parties confirmed at the hearing that they are in agreement on this article.

III. Duration of Agreement

Both parties call for a two year contract covering the 1978-79 and 1979-80 school years. The agreement is to be effective as of July 1, 1978 with termination on June 30 or July 1, 1980. In its last best offer the Board proposed a clause providing that the agreement shall be extended for periods of one year each unless either party notifies the other in writing, on or before March 1 of the year of expiration, of its desire to negotiate a new agreement. In its written presentation to the fact finder, at the hearing, however, no mention of the one year extension language is included in its duration proposal.

The Association would provide that, despite the term of the contract, either party may open three articles for negotiations (except the articles dealing with insurance benefits and professional compensation) in the second year of the agreement.

The extension of agreement language suggested by the Board in its original last best offer package is not an advisable provision. There should be some certainty to the date of termination. There is little to be gained by either party by inclusion of such language, and it can be the source of needless confusion and disagreement between the parties.

The reopener provision contained in the Association's last

best offer is not really advisable. As noted by the Board, the parties have engaged in long, extensive negotiations and dispute resolution processes. Those efforts should result in certainty and stability for the term of the agreement agreed upon by the parties. The reopener clause could be another source of disagreement and unrest.

IV. Professional Compensation

Each of the last best offers propose changes in the professional compensation article of the 1977-78 agreement. These changes relate to the extra-curricular salary schedule, the regular salary schedule, and a new cost-of-living allowance provision.

A. Extra-curricular Salary Schedule:

The personnel filling extra-curricular activity posts such as athletic coach, advisor and drivers education instructor are paid a flat dollar amount (or rate, as in the case of drivers education) above the regular salary schedule amount.

The Board's last best offer provides that extracurricular pay shall be increased by 6% in all positions in the first year of the agreement and by 4% in all positions in the second year. The Board proposes appropriate Title IX changes.

The Association proposes a 6% increase in all areas in the 1978-79 year and 4% increase over the 1978-79 salaries in 1979-80.

While there are minor language differences in the two proposals, it is apparent that the parties agree on the percentage increases in the extracurricular pay schedules.

B. Teacher Salary Schedule:

The changes in the teacher salary schedule contained in the Board's last best offer is an increase of the bases for each

category in each of the two years and a change in the categories. In the first year (1978-79) the Board proposes a \$250 increase in the base salary for each category, a 2% budgetary increase in salaries. In the second year (1979-80) the Board proposes a \$200 increase in the base salary for each category over the 1978-79 bases, a 1.5% budgetary increase in salaries. The original last best offer of the Board indicates an elimination of the M.A. +30 category and addition of a Phd. category. The Board proposed salary schedule presented to the fact finder at the hearing, however, retains the M.A. + 30 category without a Phd. category. The representative of the Board indicated that the M.A. + 30/Phd. change was inadvertent and that the M.A. +30 was to remain. The Board does propose, however, that the existing M.A. +20 category be replaced by a M.A. +15 category.

The Association proposal maintains the 1977-78 category structure with \$250 increases over the 1977-78 salary bases in each category. In the second year the Association desires a \$350 increase over the 1978-79 salary bases in the B.A. and B.A. +20 categories, a \$557 raise in the M.A. category (7% of the B.A. base), and a \$457 raise in the M.A. +20 category. This constitutes an approximate budget increase for salaries of 3%. Further, the annual increments in steps 0-5 would increase in the second year to 5%. 4% annual increments would be in steps 6 through 13. Step 10 would be attained at the start of the 11th year; step 11 at the beginning of the 13th year; step 12 at the beginning of the 15th year; step 13 at the beginning of the 18th year.

On the 1978-79 salary schedule the parties are in substantial agreement, both calling for a \$250 in each category base. They retain the increment and step structure contained in the 1977-78 contract. In the second year the Association proposes a greater increase in the base, increment increases and changes in the step structure. In terms of salary dollars the parties are in greater disagreement.

concerning the second year of the contract. The parties agree that the total difference over the two year period is \$25,419 or about 7.4% over the 1977-78 payroll.

C. Cost of Living Allowance:

Basically, the Board proposal is as follows:

1. 1978-79 year - each teacher receiving increment increase will receive maximum increase of 7.8% less his/her total salary increase.

Teachers not receiving increment will receive maximum increase of 3.8% less his/her total salary increase.

No teacher will receive more in total salary than a teacher on a higher step of the schedule.

For new teachers, an increase equal to the least amount of COLA benefits of teachers higher on the schedule.

2. 1979-80 year - Teachers receiving increment, maximum of 8%.

Teachers not receiving increment, 4% maximum.

The Association proposal is, in summary:

1. 1978-79 year - Teachers who receive increment and new teachers receive maximum increase of 1.75% of the teacher's annual salary.

Teachers not receiving increment receive 3.8% maximum.

2. 1979-80 year - Teachers receiving increment will get maximum of 2%. Teachers no receiving increment will get 4%.

D. Ability to Pay:

The Board has presented evidence indicating that special circumstances exist in the district which renders it financially less able than others to pay salaries its teachers demand or to pay salaries other U.P districts pay. This is an appropriate argument to consider.

The Board points out that it has received no membership

minimal categorical grants being self-supporting. Further, the Board argues, DeTour has proportionately greater costs than other school districts due to the unique geographical circumstances causing higher transportation costs, ferry expenses and costs borne in the necessity to operate one building on the mainland and another on Drummond Island despite an enrollment of approximately 450 students.

On the other hand, the Board argues, it has made great efforts to finance education by levying a millage above the average of the districts in the Eastern U.P., working to improve tax levy collection and obtaining tax anticipation loans to cover deficit budgets.

The Association raises questions about the Board's leadership and judgment in establishing priorities in the district. The Association points to actions of the Board in increasing Board and administrative expenses while keeping teacher compensation at minimal increase levels.

There is little question that the financial ability of the Board to pay teacher salaries which are acceptable to the professional staff and competitive with like districts is, as in many other districts, difficult. While the Board is in no position to meet higher costs by raising the price on a product, the cost of human services must not be permitted to bear the brunt of inflation while increases in non-human costs and services are paid. Ability to pay simply cannot be the controlling factor in determining the price of professional salaries. Budget constraints are recognizable and difficult. It is appreciated that with greater salary increases it may be necessary to curtail some programs or reduce total employment, but these are frequently necessary steps to maintain adequate compensation for those employed.

The Board figures that the increase in revenues for the

1978-79 school year over the previous year will be around 5.04%. Under the Board proposal teacher salaries will increase on the average of 5.22% including the increments which are often not counted in considering % increases for a given year. With the COLA addition, the Board figures an average percentage increase of 6.9% over 1977-78. (including increment)

Teacher salary comparison in comparable school districts provided by the Association, shows DeTour rates at or below the average in similar districts. It is difficult, however, to make totally meaningful comparisons due to the different salary and COLA structures.

Generally, however, the Board proposals for salary in the second year of the proposed contract appear to be below that which might be recommended, although the COLA makes up some of that discrepancy.

While neither COLA proposal is entirely satisfactory, both parties are to be congratulated for working to implement this kind of protection against inflation and its effect on real wages.

If it was possible, the fact finder would recommend that the salary increase in the second year be something more than what the Board has offered and something less than what the Association has proposed. As between the two proposals, however, the Association offer is more appropriate as it more closely maintains the relationship between the DeTour salaries and those of comparable school districts. Under the Board proposal the DeTour salaries would fall further behind those in comparable U.P. districts of similar size. The Association proposal tends to maintain the relative position. Moreover, the Association salary and COLA proposals more adequately provides protection against existing and anticipated inflation.

The cost of the Association salary proposal further represents

less of a drop in the percentage of the total budget devoted to professional compensation than the cost of the Board proposal.

The real difference between the parties is in total dollars in the second year, and this, as earlier indicated, only amounts to a total difference of \$25,419 for the two year period of the contract. Thus it appears that the parties are not greatly apart as measured by total impact on the budget.

The Association's compression of the schedule by removal of the last category is problematical. While both parties confirm that no teacher is presently in the category that condition may change and consideration of a return of the category should be considered in future negotiations.

SUMMARY

Both parties present well-prepared and forceful arguments. Apart from the matters already mentioned, it is noted that considerable sophistication in the contract has developed. While there is rarely no question about the total adequacy of the teachers' compensation, some important benefits have been gained by the teachers in DeTour. As noted by the Board, some of these benefits have increased in value from year to year and represent increased costs to the Board over time. Particularly noteworthy is the cost to the Board of health insurance coverage which has increased 600% over a ten year period.

The fact finder, by agreement of the parties, has no choice but to accept one total package or the other.

There is good and bad in each of the last best offers. The position taken by the Association on management rights language is preferable to that of the Board. The reopener clause sought by the Association is a contract provision that is very difficult to accept. The crucial issue, though is that of teacher compensation.

The Board's salary schedule improvement proposal is modest, particularly in the second year. The Association's salary improvement for the second year is more appropriate as it maintains a closer relationship between DeTour salaries and salaries for teachers in comparable school districts.

The parties have wisely progressed with a form of inflation protection in the cost of living allowance. While the Association COLA proposal is not entirely satisfactory, the combination of the salary proposal and COLA proposal do not raise the salaries inappropriately.

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AWARD

The last best offer of the Association should be adopted in the agreement between the parties.

Dated: 1-6-79



George E. Gullen, Jr.