

Fact Finder: Carl Cohen

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FACT FINDING REPORT AND RECOMMENDATIONS
UNDER THE REGULATIONS AND PROCEDURES OF THE
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

LABOR AND INDUSTRIAL
RELATIONS COLLECTION

Michigan State University

In the Matter of

Detroit Public Schools:

(Site management Unit) and (Security Officers)

-- and --

Teamsters, Local 214

FACT FINDER: Carl Cohen, Ann Arbor, Michigan

MERC Cases Nos.: D87 E-1035 and D87 C-479

Date of Report: June 6, 1988

1. Background

The Board of Education of the Detroit Public Schools ["the Board"] and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 214 (Site Management, and Security Officers II) ["the Union"] began negotiations early in 1987, looking to the development of two Agreements, one with each of the two units here identified. Since, after mediation, the parties remain unable to reach agreement, the outstanding issues were presented for Fact Finding before Carl Cohen, of Ann Arbor, Michigan. The Fact Finder, appointed by the Michigan Employment Relations Commission, was instructed to hold a hearing in this matter, and at the conclusion of this hearing to serve a copy of his Report, with recommendations, to each of the parties and to the Michigan Employment Relations Commission. The document in hand is this Report.

2. Hearing and Appearances

A hearing on this matter was held at the offices of the Detroit Public Schools, in Detroit, Michigan, on 3 May 1988. Both parties were given full opportunity to present evidence and exhibits, to question the materials presented by the other party, to examine and cross-examine witnesses, and to present to the Fact Finder all relevant arguments.

Appearing for the Board at the hearing was Mr. George Anderson, Attorney for the Board's Department of Labor

Detroit Public Schools

Affairs. Appearing for the Union was Mr. Ronald D. Bush, Vice President of Local 214.

Also in attendance for the Union were: Mr. Henry Hawkins, Steward WSBT; Mr. Don Morgan, Steward, Site Management; and Mr. Jack Crumpler, Chief Steward. Also in attendance for the Board, and testifying as witnesses, were: Dr. George Kimbrough, Executive Director, Labor Affairs; Mr. Dennis J. Makulski, Assistant Director, Labor Affairs; and Mr. William E. Aldridge, Budget Director for the Board.

The following exhibits were presented to the Fact Finder:

Joint Exhibits:

J-1 A, The Agreement with Security Officers II, expiring on 30 June, 1987, and

J-1 B, The Agreement with the Site Management unit, expiring on 24 August 1987.

Board Exhibits:

E-1, Order of Approval for issue of Tax Anticipation Notes;

E-2, Finance Committee Meeting Minutes, 4 Feb 88;

E-3, Memorandum, 21 Jan 88, with Revised Projections for General Purpose appropriation balance at 30 June, 1988;

E-4, Board Meeting Calendar for 12 April 1988.

Union Exhibits:

U-1 Memorandum, from R. Bush to Dr. Arthur Jefferson, laying out the Union position on certain key matters.

3. Stipulations

The parties agreed, at hearing, that they seek contracts for a three-year period, with a wage-opener for the third year, the contracts to run from the date of expiration of the old contracts. Although there are two bargaining units involved (both within Local 214), the parties agreed that the present controversies affected both units identically, and therefore also agreed that for present purposes the two MERC cases before the Fact Finder should be combined. In all that follows, therefore, the Fact Finder treats the issues as applying identically to the units involved; no distinction between the two is relevant to this Report.

The parties agreed at hearing that post-hearing briefs would be submitted no later than 17 May 1988.

4. Issues Remaining to be Resolved

Two large, economic issues presently continue to divide the parties.

(1) The Union seeks, for each employee, an economic package of \$800.00 per year, to be paid as an additional fringe benefit to a carrier selected by Teamsters Local 214. The Board rejects this demand and offers no additions to wages or fringe benefits.

(2) The Union seeks a guarantee of no layoffs for the membership of all members of the bargaining units. The Board rejects this demand, declining to offer any such guarantee.

Because both issues are essentially economic, and both center upon the ability of the Board to pay for economic improvements, the arguments in this case were presented by both parties as one set, covering both issues. The Fact Finder will therefore deal with them in this way.

5. Positions of the Parties, and

Fact Finder's Discussion of the Conflicting Positions

The position of the Union is that fairness to its members absolutely requires that some improvement be made in their economic circumstances. The Union recognizes that the economic condition of the Board is not good, but denies that it is impossible for improvements in benefits to be given.

When, in the autumn of 1987, the Board at first refused to accede to the demand of the Teachers' Union (Detroit Federation of Teachers) for a substantial pay increase, the Teachers went out on strike -- unlawful in Michigan, but nevertheless a reality then. The Board contended then, repeatedly, that it simply did not have any money for additions to wages, that it could not pay for them. Nevertheless, after a prolonged strike, the Board changed its position and offered an increase of 6.5% -- an offer that was eventually accepted by the Teachers' union. Subsequently, the union for Principals and Supervisors (OSAS) was given the same increase. Other unions' bargaining units also have received wage increases in the interim. In every case the Board has insisted that it had no money -- and yet, somehow, it found the needed money to make those wage improvements. Now, once again, the Board is claiming that it has no money -- and now (argues the Union) that simply cannot be believed.

It may be, argues the Union, that the Board had to borrow money to pay for those earlier increases; in that case it can borrow more money to pay for these. It may be that the Board had to tighten its belt elsewhere in the

system; in that case it can tighten its belt a bit further, to pay for a package that is, relative to the Teachers' increase, a rather small amount -- less than one million dollars.

The Union seeks in these negotiations to adopt a responsible position. Realizing that the Board is in a serious deficit position, the Union does not ask for an increase in base pay, but seeks instead for lump sum benefits (and no-layoff guarantees) which will have no impact upon continuing economic obligations in subsequent years.

This Union does not threaten to strike, or adopt other unlawful strategies. The Union notes, however, that the unlawful strike of the Teachers' Union appears to have succeeded brilliantly in its aims, and the willingness of the Board to reward that illegal activity (while being adamantly unwilling to respond to these lawful negotiations) may reasonably be read as an encouragement of strikes that the Board claims to condemn.

The Union, very explicitly, does not claim that its members are being paid at a rate that is, comparatively, unfair. The Union presents no data concerning the payment of comparable employees in other systems; it does not contest the claim that others doing similar work for other public agencies are paid far less. "We're not arguing that our people are underpaid" said the Union representative, more than once during the hearing. His point, made repeatedly and clearly, was this: other bargaining units have gotten, by unlawful means, what this unit cannot get because it respects the law. If the Board can find money for one group, it can find money for another -- and fairness requires that it do so. The limited demand here presented by the Union, say they, is the very least that the Board can do for the members of these bargaining units.

The position of the Board has two aspects. Its chief claim, vigorously argued and defended, is that its financial condition, desperate or nearly so, simply does not permit pay raises for those who have not already received them through negotiation. Secondly, the Board claims that there simply is no need for economic improvements in this case, as there surely was in the case of the teachers in the fall of 1987. These claims are importantly related.

First, with regard to the financial position of the Board. It is unquestionably in debt -- seriously, heavily, painfully. Exhibit E-1 shows that the Board has been obliged to issue tax anticipation notes -- that is, to rely on borrowing secured by expected tax revenues not yet collected -- for 76 million dollars. The Board argues that its financial position is simply too weak to permit -- beyond

the commitments already made -- any salary increases whatever.

It is true that, when the teachers went on strike in the fall of 1987 the Board, claiming honestly that there was no money to pay for raises, nevertheless made deep cuts elsewhere in the system to provide some additions to teachers' salaries. But teachers, the Board points out, play a very special role in the school system; they are the ones who provide the instruction that is at the heart of what the school system is there to do. Moreover the teachers, at that time, were plainly underpaid, the Board notes; they were then some \$5,000.00 under the salary levels of teachers with comparable credentials and duties in nearby school systems. Everything considered it was judged reasonable to cut deeply into the remainder of the system -- even (according to Board witnesses) forcing layoffs elsewhere in the system -- to raise that money then.

The Union claims that the Board was bargaining in bad faith at that time -- because it said it had no money when in fact it did have money; and that it is doing the same thing now. The Board responds that it was telling the truth at that time, as it is now. It had no money for teacher raises in 1987, but got money for that purpose by cutting deeply into other parts of the system. It has no money for raises now; its financial position is yet worse than it was -- and in this case it cannot justify cutting elsewhere in the system to provide raises for these bargaining units.

It is true, the Board witnesses testified, that in addition to the teachers, the Principals and Supervisors got raises -- but their salary levels are tied, historically and contractually, to the levels of the teachers, so the Board had no alternative with respect to that unit, OSAS. It is also true that some other unions received small wage increases since that time -- but the only ones that did so were unions with which an earlier agreement had absolutely committed the Board to a minimum wage increase of 2 or 3% for the third year of a three-year contract; this minimum, which the Board could not avoid, was paid, but nothing whatever was or could have been added. Besides these cases, where commitments forced raises, the Board has given none, and can justify none.

The Fact Finder has reviewed the evidence in this case very carefully, considering the detailed testimony of the witnesses, and examining in scrupulous detail the documentary evidence presented by the parties. Especially has he examined the claims of the Board that it faces a serious deficit situation, and the documents supporting that claim. In this dispute the central issue is the financial position of the Board.

The Fact Finder's conclusions from this study of the evidence are clear and inescapable. The financial position of the Board of Education is, indeed, dreadful. It is operating with a grave and nearly intolerable deficit. The seriousness of this deficit can be expressed by presenting, in the Fact Finder's own summary form, what the documentary evidence shows:

At the end of June, 1988 -- the month in which this Fact Finder's report will be submitted -- the financial condition of the Board will show the following features:

Audited Deficit from years before 1987-88:
\$33.4 million;
Estimated Deficit in Appropriation for 1987-88:
\$21.4 million;
Shortfall of expected revenues for 1987-88:
\$9 million;

Net Deficit at 30 June 88: \$63.8 million.

Maximum savings anticipated from reduced hirings and promotions for 87-88: \$3.5 million.

Resultant accumulated deficit as of 30 June 1988
(not yet audited but virtually certain):
\$60.3 million.

This figure, 60.3 million dollars, differs (partly as a result of rounding) from the bottom line figure shown by the Board in its account, by .1 million -- but its essential meaning is painfully clear: the Detroit Board of Education is operating in the red, gravely and unhappily and desperately in the red. It is functioning on borrowed money -- loans that, in truth, it does not have the funds now to repay, and that it is not likely soon to be able to repay.

In this context the Fact Finder asks: can the Board be expected, acting responsibly, to borrow yet more money to pay the \$800 per person benefits sought by the Union in this dispute? The Union argued, at hearing, as follows: If the Board is in debt, even to the tune of 60 million dollars, let them borrow more. The money needed to meet this demand is -- in the words of the representative of the Union at the hearing -- "a drop in the bucket." Being 61 million dollars in debt is not so much worse than being 60 million in debt. If the Board could rustle up some money when the teachers demanded it, and were willing to strike for it, the Board can do the same for site management people and security officers without a strike. If not, the Board is teaching all concerned that the way to proceed in these matters, law or no law, is to strike.

The Fact Finder is not persuaded by this Union argument. It is true that, conceivably, the Board could borrow yet more money to offer nearly an additional million dollars in benefits. Of course, if it did so, it would immediately face demands for the same benefits from a series of other bargaining units to which it has, consistently to this date, replied that all wage raises not previously agreed to are out of the question. But that is speculative; and the argument even with respect to this demand only (putting aside the demands that would be invited if this one were granted) relies upon the justifiability of the raises themselves.

Here we come to the second of the two related major arguments: are the economic benefits sought by the Union for these bargaining units justified? In the case of the teachers the underpayment at the time of negotiation was evident to all. But in this case there is no claim by the Union of comparative underpayment. The Fact Finder invited the presentation of comparable remuneration schedules, but the Union declined to present any, and in fact was very frank and forthright in saying, in just these words, that "our issue is not that we are being underpaid."

Thus the question -- even if the remote possibility of yet greater deficits were to be considered -- would be whether the desperateness of the salary situation here could justify that further borrowing. Plainly it does not. No case for the comparative unfairness of remuneration in these units has been made, nor does it appear likely that it could be made.

Both parties, at hearing, were invited to present, in post-hearing briefs, the evidence or argument that might resolve this question. The Union declined to present such materials, for reasons that are no doubt good ones. But the Fact Finder is left with the inescapable conclusion that the economic benefits here sought by the Union cannot be substantively defended.

The Union presents a somewhat different argument, however. Without a substantive defense for the \$800 fringe benefits, and no-layoff guarantees, that they seek, the Union offers an argument from equity. They say, in effect, that if the teachers are entitled to raises, then they -- the site management workers and security officers are entitled at least to some substantial economic improvements. What is given to one unit must, say they, be given to the others.


The "giving" is with public funds; the Fact Finder, whose responsibility is to consider the interests of the parties and that of the public they serve, cannot find that argument persuasive. It does not follow that because one

union (that of the teachers), representing clearly underpaid workers in one branch of the system, is given a raise, that all other unions, representing workers who are not underpaid, in other parts of the system, should be given economic benefits as well. The public funds that support the Detroit Schools are not raised by taxation to be distributed like shares of cake; they are there to run a large, expensive, and exceedingly complicated family of schools and school services prudently. The Union is entirely right in seeking to be treated equitably, fairly. It is the responsibility of the Board to do that. But being treated equitably, in this case, does not mean being treated equally, or even nearly equally. Fair pay for teachers must be established by looking at the comparable rates in comparable communities for the payment of teachers; the same is true for workers in other fields. No case has been made to show that, from the point of view of real justice, the Board has an obligation to borrow (if it could borrow!) yet more money to provide economic benefits to the members of bargaining units not unfairly paid now.

6. Fact Finder's Conclusions and Recommendations

A Fact Finder has been appointed in this case because it is believed, by the Michigan Employment Relations Commission, that "the matter in dispute between the parties might be more readily settled if the facts involved in the dispute were determined and publicly known." The analysis and discussion given above will, it is hoped, serve this purpose. The economic benefits here at issue -- an \$800.00 fringe benefit package per employee in each of two bargaining units, and the guarantee of no-layoffs for both bargaining units -- have not been justified by the evidence and argument presented in these proceedings. The Fact Finder concludes that the position of the Detroit Board of Education in this matter, seeking to contain its indebtedness and to behave responsibly and fairly with public funds, is reasonable and defensible. The Fact Finder recommends that continuing negotiations between the parties go forward with that public understanding.

Respectfully submitted,


Carl Cohen
Fact Finder