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In the Matter of Factfinding  
between the  
School District of the City  
of Detroit  
and the  
Michigan Federation of Teachers,  
AFL-CIO

Edward Simpkins

Case No. D81K-2673

APPEARANCES

Union

Ruby M. Baker  
Ruth Brown  
Joe Crowell  
Ted Madison, Rep.

School District

Gordon J. Anderson, Esq.  
Thomas Cooney  
Alfred Freeman  
Joseph Hirsch  
Jeffrey F. Kilgore

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AWARD: The Factfinder recommends incorporation of the following provisions into a successor Agreement between the parties. All language and provisions in the previous contract not expressly amended or amended by inference shall also be incorporated within the successor Agreement.

1. Duration:

All provisions of the previous Agreement not amended by this Agreement shall be incorporated without change into the successor Agreement,

effective 9/1/81-8/31/83. Salary provisions shall be effective upon ratification by both parties, October 1, 1982.

2. Transportation and Liability Costs:

Assistant Attendance Officers render transportation services to students and should carry adequate insurance coverage. In addition to the mileage allowance available to Board employees, a prorated stipend not to exceed twenty dollars (\$20.00) monthly will be provided to offset private liability costs.

3. Seniority Accrual:

There shall be no loss of seniority accrual among members of the unit upon layoff unless such layoff continues for a period greater than one year.

4. Conduct of Union Business:

The President of the Assistant Attendance Officers unit will be given reasonable time to investigate grievances but shall not receive any extra pay from the Board because of the performance of such duties.

The representative shall perform such duties without interference with his/her own job functions or the job functions of other employees.

All Union business conducted by the representative shall be outside the scheduled working day except as otherwise authorized by the principal or administrator.

5. Recall and Seniority:

Assistant Attendance Officers shall be recalled in reverse order of layoff with the person having the greatest systemwide seniority being given first opportunity of recall.

6. Tuition Payments:

Policies regarding tuition payment for Title I funded employees shall apply equitably to members of the Assistant Attendance Officers' unit.

7. Salary:

The salary schedule shall be adjusted 3.5% effective October 1, pending ratification of the Agreement by all parties. Each member of the unit shall receive a one time only payment of \$400 within 30 days following ratification of the Agreement.

BACKGROUND:

Bargaining between the parties began on June 8, 1981. On April 2, 1982, the Union petitioned for factfinding under Rule 423.431. It noted that the unit which it represents consists of thirty-six persons and argued that good faith bargaining and mediation have not resolved the issues between them sufficiently to enable the parties to reach agreement. The Union expressed the belief that the employees whom it represents are underpaid. And it further pointed out that the Employer has received funding based on a budget which exceeds the salary increase which the Union has proposed.

The Union further noted that several non-economic issues remain to be resolved. Hence, it argued that full public disclosure of the areas in dispute will assist the parties in their effort to reach agreement.

The Board subsequently joined the Union in its petition. The matter was brought to factfinding on August 22, 1982. Hearings were conducted on August 22, September 1, September 3, September 27 and September 30.

The record includes twenty submissions. Four were jointly provided. Nine were presented by the Union and seven were submitted by the Employer.

PROCEEDINGS AND TESTIMONY:

The Union noted in its pre-hearing brief and in its opening remarks that fourteen issues remained outstanding. Three of these issues, it

pointed out, could be removed from the factfinding process because of understandings reached between the parties during mediation. Of the remaining issues, the Union observed, six were economic and five were non-economic.

Arguments in support of the non-economic items may be summarized rather briefly. The Union expressed the belief that it would cost the Board nothing to ". . . make payroll deductions available to members of the bargaining unit for the Union's Political Action Fund." (See Union-X1.) To meet some of the Board's objections, the Union offered the following language:

The member's authorization shall be voluntary. It shall not be a condition of continuing membership or employment. The Union agrees to pay in full all costs related to the implementation and maintenance of the aforementioned payroll deduction.

The Employer's concerns were set forth in direct testimony from Anderson. He noted that the proposal in the prehearing brief contained a hold harmless clause and an indemnification clause. The factfinder inferred from this that those clauses had not been a part of the previous discussions between the parties. Anderson further noted that the political action committee exists at the Union's discretion and may serve the Union's interests even when those interests conflict with interests of the Board. He indicated that he would check further with the employer regarding the matter.

The second item in the Union's pre-hearing brief was on the subject of Working Rules. The Union proposed:

Assistant Attendance Officers shall not be required, under any circumstances, to transport students or other parties as part of their job or educational activity.

Brown testified to the role of the Assistant Attendance Officers, noting that they are required to have an automobile although no auto insurance is provided by the school district. Assistant Attendance Officers check with the homes of youngsters receiving Title 1 assistance. They maintain contact with support agencies on behalf of the school and the youngsters who are affected and must sometimes transport them in their automobiles. To date, no grievances have been filed but Brown, who is the President of the A.A.O.s, testified that the issue of insurance liability is of major concern to her membership.

The issue of Promotion for A.A.O.s was the next to be addressed. The Union proposed that:

In filling vacancy for Attendance Agents, priority shall be given to A.A.O.s with top seniority.

Testimony revealed that persons from a variety of classifications compete for and are sometimes placed in the position of Attendance Agent. Among the feeder classifications for the Attendance Agent position are: teacher, Assistant Attendance Officer, and social worker.

The Employer objected to this provision. It was subsequently modified and during the factfinding proceedings the Union argued that employees in the unit should, upon completion of degree requirements, have their names entered into an eligibility pool without an interview. This, too, met with objection from the employer.

Within the context of layoff, the question of seniority arose once again. The Union believes that seniority should accrue during layoff periods of less than a year's duration. The issue arises out of a grievance involving two employees, Elaine Hubbard and Cleophus Hynes. Although the Union was sustained without having to go to arbitration, the matter left the employees with the desire for greater guarantees than

those that presently exist. The Employer explained that the questions at issue in the matter involving Hynes and Hubbard largely arose out of a misreading of dates.

Also under the seniority heading in its list of proposals was a matter relating to Union security. In its pre-hearing brief the Union proposed:

The President of the unit shall have available for union duties an amount of time equivalent to five hours per week.

This is followed by a proposal addressing both seniority and recall.

It reads:

Lack of funds shall be deemed to occur when the local school and/or regions fail to purchase the service. In the above instance, the Board shall make certain through Board funding that there is a minimum of five (5) Attendance Officers per region. When a position is closed out, Assistant Attendance Officers with the greatest systemwide seniority will be permitted to bump in order to avoid a layoff.

Assistant Attendance Officers shall be recalled in reverse order of layoff with the person having the greatest systemwide seniority being given first opportunity of recall.

The Employer was not in agreement with the proposal.

The matter of tuition reimbursement was discussed at great length throughout the three phases of bargaining. A number of proposals had exchanged hands prior to factfinding and more were developed prior to concluding that phase of the bargaining effort. The Union, for the most part, was the moving party in the effort. It was able to raise the parity question convincingly particularly as tuition reimbursement policies affect the unit of A.A.O.s and the companion unit of paraprofessionals.

The most difficult question was related to the economic settlement. Proposals affecting operating costs may be set forth implicitly or

directly but generally speaking there is very little that is not economic in bargaining. This situation was no different. Dental, life insurance, workshop rates, longevity pay and salary improvement comprised the list of unresolved issues constituting the major economic bars to resolving the dispute. These matters are discussed in the section below.

#### DISCUSSION AND FINDINGS:

It is noted that the Employer has not argued inability to pay. Testimony by both parties establishes the fact that the affected unit is funded from federal sources and that monies are available to provide these employees with a salary adjustment.

Under direct exam, Hirsch testified to the process through which funding is derived for the unit. He pointed out that after Congress announces Title 1 appropriations, the State Department of Education informs LEA's (Local Education Agencies) of the amount of monies available to them. LEA's submit an application at least a month before their proposed program is scheduled to be implemented. Applications must receive approval before funds can be spent and before program implementation can begin. At the end of the year's operation an effort is made to report all unexpended funds and to carry over such funds in a separate budget. If this effort is successful and if monies have been saved from the previous year, then authorization may be granted to carry over such monies in a separate budget. These monies may then be used in a manner consistent with the program's goals.

Hirsch testified that in the past year carry over funds ranged somewhere between five per cent and twenty per cent. It was noted that bargaining was going on with the unit while application for funding was underway.

It appears to the factfinder that the request for (and receipt of) carryover monies ranging from five per cent to twenty per cent contributed to the Union's expectation that the Board anticipated some adjustment in salary schedules for members of this unit. Madison addressed this issue on several occasions during the hearings. He further noted that the comparison unit of paraprofessionals received sizeable increases which resulted in a considerable change in the relationship between the salary statuses of the two groups of employees.

In cross exam on Board Exhibit B, he argued that the paraprofessionals received salary increases in 1979-80 which ranged from twenty-three per cent to fifty-five per cent. The Employer rebutted the argument on the low end, pointing out that some members of the paraprofessional unit received increases as low as seven per cent. Continuing its rebuttal, the Board pointed out that A.A.O.'s received an increase of six per cent during this period. Board Exhibit B also shows that at least two units received lower percentage increases than the A.A.O.'s. With the exception noted, the A.A.O. adjustment was in line with the range of salary adjustments given that year. (See Bd. X-8.)

The Board also submitted an Exhibit 7. This document shows that present Employer policy is to pursue concessions from members of units that are engaged in bargaining. Eleven units agreed to concessions. These concessions were generally implemented by having employees voluntarily take designated days off without pay. Those units that did not agree to concessions suffered layoffs.

The units taking the concessions also suffered layoffs. However, the layoffs were less severe in terms of numbers of employees affected.



The situation is one in which the employer has the need to reduce general operational costs. However, a reserve of earmarked monies exists which may be used to adjust the salaries of employees in this particular unit. Although the adjustment will not exacerbate the Employer's fiscal situation, it will constitute a deviation from the general established policy.

Such policies, of course, are subject to the negotiations process. As the policy affects this unit it can be jointly sustained or jointly set aside. There is lack of agreement for sustaining the policy as it relates to this unit so it must be set aside. It must be noted that the employer's ability to reduce general operational costs is not directly affected by the setting aside of his general policy of not granting salary increases since 1981. If salary increases are granted in this unit, they will come from monies already available for that purpose. The question then is whether the Union's demand for a salary increase for members of this unit has merit.

Merit may be established in several ways, all of which involve comparability against an acceptable fixed standard: the consumer price index, members in the same classification employed by the same employer, or members in a tandem unit where the same pay scale exists or where a differential in pay scales exists and has been maintained. In the instant case the Union argued that there is a tandem unit of paraprofessionals. This unit, the Union maintains is employed by the same employer and is funded under the same Title 1 monies from which A.A.O. salaries are derived. The Union argues further that these employees received salary adjustments which ranged from 23% to 55%, amounts far exceeding the salary adjustments which A.A.O.'s were awarded.

This contention was borne out in Employer Exhibit 8. It was asserted through direct exam and sustained through cross exam. The only difference was in the Employer's assertion that some paraprofessionals received wage increases for the 1979-80 school year that were as low as 7%. The Factfinder notes that in the 1979-80 school year, while paraprofessionals were receiving increases ranging as high as 55%, A.A.O.'s received an increase of 6%. In 1980-81 A.A.O.'s received an increase of 7% while paraprofessionals received an increase of approximately 5%. The net effect was to close the gap between these two categories of employees. The Factfinder notes that paraprofessionals actually refers to more than one classification. Some persons are school service assistants, some are neighborhood workers and some are student assistants. The Factfinder also notes that the unit of A.A.O.'s negotiated its first agreement in September of 1980 with the contracted increase of 7%. Board Exhibit 4 shows that the paraprofessionals and the A.A.O.'s are comparable units. They are discussed together under the general heading "paraprofessionals" in the 1978 findings and recommendations of the Michigan Department of Education. The report indicates, in part, that ". . . more than 1500 paraprofessionals were hired as aides to Title 1 regular classroom teachers and as school librarians, attendance officers, and community liaisons . . . ." All paraprofessionals interviewed were performing general duties which meet the needs of the student body at large. In another letter dated October 20, 1978 from Jefferson to Paslov, under item 10 paraprofessionals and assistant attendance officers once again are referred to under the same heading. Jefferson appears to describe them collectively as Title 1 aides. It must be noted that the categories

of paraprofessionals are at differential rates in the jobs which they perform. The A.A.O.'s role is fairly well defined. Their positions are 39 week appointments under the Office of Public Personnel Services. They are required to have completed at least one year's satisfactory work in an accredited college or university and their transcripts prior to interview must show course work taken in two of the following areas: sociology, psychology, mental hygiene, and community relations and services. Paraprofessionals are hired to work as aides to Title I and regular school classroom teachers, as school librarians, as attendance officers, and community liaisons (see Board Exhibit 4). Hence, the Factfinder concludes that the positions are in fact sufficiently similar to the extent that the Board in its own Exhibit collapsed attendance officers under its definition of paraprofessionals. In instances where the work may be different, in that some paraprofessionals work as librarians or as classroom aides, it is still noted that the work is not essentially of greater complexity than that performed by A.A.O.'s. Hence the Union's claims to a pay adjustment are found to have merit for the following reasons: the A.A.O.'s are generally regarded as paraprofessionals; the mean increase for members of their unit was grossly lower than the mean increase for paraprofessionals in the paraprofessional unit over the past two years. As A.A.O.'s these employees at one time were the highest compensated employees among paraprofessional type employees. And finally no evidence was presented to justify the altered fiscal status of the groups which resulted from the sizeable increases awarded to the paraprofessionals. The Factfinder proposes that in view of the fact that paraprofessionals over the past two years received increases

ranging from 7% to 55% that the requested adjustment recommended by the Factfinder during the proceedings be implemented. Following ratification of the Agreement, each member of the unit shall have his salary adjusted 3.5% effective October 1, 1982. Each member of the unit shall also receive a one-time only payment of \$400.00 within 30 days following ratification of the Agreement by both parties.

The Board and the Union, prior to coming to factfinding, had resolved the issue of mileage allowance. Hence, that matter was not directly a part of the issues to be resolved. However, the Union did point out that its members are required to use their automobiles in the performance of their duties. The reference and procedures guide for assistant attendance officers reads ". . .the Board of Education does not assume the responsibility for injuries sustained by pupils while riding in automobiles of attendance personnel. All attendance personnel render transportation at their own discretion and have been doing so for years. Wisdom dictates, however, that personnel carry adequate insurance coverage." Although other employees may not be directed to carry pupils in their private automobiles, the Factfinder is persuaded that A.A.O.'s are periodically directed to do so. Both Brown and Baker so testified. They were credible witnesses and the above quoted language also suggests that there is some expectation on the part of the Board that these employees will carry children in their automobiles. The Factfinder, therefore, recommends that the Board provide these employees with a prorated stipend not to exceed \$20.00 monthly to offset the cost of their liability coverage. This provision is not intended in lieu of any subsequent agreements that may be reached on the mileage issue, but in addition to such agreements.

The Union has requested extensive language on seniority. The Factfinder recommends the following language as a total settlement of all issues related to the question of seniority: There shall be no loss of seniority accrual among members of the unit upon layoff unless such layoff continues for a period greater than one year.

In addition to the seniority provision the Union argued that since paraprofessionals have building representatives, the A.A.O. President should be given time to investigate grievances and perform other Union duties. The following language is the policy governing school board/paraprofessional relationships on this issue: (The President of the Assistant Attendance Officers unit)\* will be given reasonable time to investigate grievances but shall not receive any extra pay from the Board because of the performance of such duties. He/she shall perform such duties without interference with his/her own job functions or the job functions of other employees. All Union business conducted by the representative shall be outside the scheduled working day except as otherwise authorized by the principal or administrator.

The above language is proposed by the Factfinder as a parity statement and is recommended to resolve the issue between the parties regarding released time for contract maintenance purposes.

On the question of recall and seniority the following language is proposed in resolution of the issue between the parties dealing with the question of seniority: Assistant Attendance Officers shall be recalled in reverse order of layoff with the person having the greatest systemwide seniority being given first opportunity of recall.

\* Factfinder's insertion in parentheses. Other language from the paraprofessionals Agreement.

On the question of tuition payments, the Factfinder again is persuaded that the paraprofessionals unit is indeed comparable to the unit of A.A.O.'s and that language in the paraprofessional contract governing policies of tuition payments are also appropriate to the A.A.O.'s unit. Hence, the recommendation is as follows: Policies regarding tuition payment for Title I funded employees shall apply equitably to members of the Assistant Attendance Officers' unit.

It should be noted that all of the proposals submitted for factfinding do not appear in the final recommendations. The Factfinder, for example, remands the matter of the political action deductions to the parties for further discussion. As the Employer's agent noted during the hearing, the Union's insertion of a hold harmless clause makes the proposal more acceptable to the Employer. But reservations remain inasmuch as the political action committee will exist solely at the Union's discretion. Although this item is important to the Union, the Factfinder notes that it was not explored sufficiently prior to the hearing for the Employer to have been aware of the Union's intent to insert a hold harmless clause. It appears that there is a willingness to explore areas of agreement on this issue. The matter is remanded to the parties and, may be incorporated within this immediate successor agreement if timely resolution is achieved.

Insofar as the proposal for filling vacancies for Attendance Agents is concerned, the Factfinder noted, during the hearing, that the Union's argument was not persuasive. The Union proposes that the A.A.O. with greatest seniority shall be given the position of Attendance Agent when such a position is open. The Employer stated that Teachers and Social Workers as well as Assistant Attendance Officers currently compete for these jobs. The position is awarded on the basis of assessment of qualifications through an interview.

The Factfinder is persuaded that the procedure works well and notes no grievances filed on this particular practice. It is further noted that some A.A.O.'s have, in fact, succeeded to the position of Attendance Agent.

No change is recommended in the established practice.

On the matter of released time for the A.A.O. President, the Factfinder has taken language from the paraprofessional agreement and inserted it in the recommendation section of this report. The nature of the roles for Union leaders in the respective units is, to some extent, a function of physical locations and surroundings. The job roles impose limits on the way in which elected Union officials will represent their membership. In the interest of parity, the Factfinder has proposed language which provides recognition of the A.A.O.'s rights to a contract maintenance officer which is similar to that accorded the paraprofessionals. With slight change the paraprofessional contract provision is recommended for inclusion in the proposed successor agreement between the Employer and the A.A.O.'s.

The Union also proposed that the Employer agree to maintain a minimum of five Attendance Officers per region. When a vacancy occurs, A.A.O.'s would succeed to the job. Again, the Union was not persuasive in its argument. Testimony by Freeman established the fact that A.A.O. positions are jobs flowing out of a community's felt needs for services of this kind. They may choose to spend their monies to purchase additional help in the Attendance area or in some other area where needs are perceived to exist.

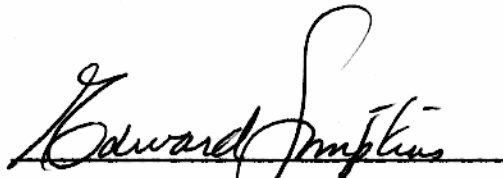
Understandably, there is a natural disquiet associated with occupying positions where employment cannot be guaranteed. It is nevertheless

the nature of the program. Were the Employer to regularize the positions by guaranteeing them, then they would no longer be fundable under the federal guidelines.

The Employer's arguments are persuasive hence the proposal is not recommended.

Those proposals that are recommended are summarized on pages one and two of this report.

All other matters not specifically agreed upon during the three phases of negotiation including the Factfinding process may be discussed by the parties in subsequent negotiations intended to lead to a successor agreement. These recommendations are intended to become part of the agreement between the parties effective from 9/1/81 through 8/31/83 and to stand as a final resolution of all issues that are currently in dispute between them.

  
J. Edward Simpkins  
Factfinder