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STATE OF MICHIGAN
FACT-FINDING HEARING

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In the Matter of:

CITY OF DETROIT, BOARD
OF EDUCATION,

Employer

MERC Case No. D82 D-2141

-and-

DETROIT FEDERATION OF
TEACHERS, AFL-CIO,

Local 231, Union

FACT FINDER AWARD

il trait Robert Neuhart

David S. Tanzman
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INTRODUCTION

On June 30, 1982, the three-year, 1979-1982 collective bargaining agreement between the Board of Education of the School District of the City of Detroit (hereinafter the Board) and the Detroit Federation of Teachers, Local 231, American Federation of Teachers, AFL-CIO (hereinafter the Union or DFT) expired. Negotiations between the parties for a successor contract had begun on May 20, 1982. At that time the DFT submitted numerous economic and non-economic proposals, including a proposal for a twelve (12%) percent wage increase. The Board had also submitted numerous economic and non-economic proposals, including proposals for economic concessions.

The parties continued to negotiate during the summer of 1982, eventually assisted by a mediator from the Michigan Employment Relations Commission.

Negotiations continued through the month of August.

On August 23, 1982, the Board submitted alternative proposals to the DFT, each calling for approximately \$23 million of economic concessions in 1982-83. The Board proposed a nine (9%) percent salary roll-back to the 1980-81 pay schedule, and a waiver of salary step increments; or alternatively, other combinations of concessions adding to \$23 million, such as a salary freeze at the expired 1981-82 contract level, a waiver of step increments, "payless holidays", a waiver of longevity pay, health insurance reductions (co-pay and increased deductibles), the easing of substitute teacher requirements including elimination of a pay differential for so-called "regular emergency substitutes" ("RES"), and/or the requirement of a "common preparation period" at the end of the school day.

The DFT objected to all of the Board's proposals but offered to settle for a wage freeze including the customary step increments and other fringe benefits.

When the parties were unable to reach an economic agreement, the Board filed a petition for fact-finding with the Michigan Employment Relations Commission, and the Union filed an unfair practice complaint with the Commission against the Board. Each denied the other's contentions.

As the traditional date for the reopening of school--the day after Labor Day--approached, the Board advised the DFT that teachers should report for duty on Tuesday, September 7, 1982, with students reporting for class on Wednesday, September 8. The Board stated that teachers would be paid for 1982-83 in accordance with the 1980-81 salary schedule, and without step increments. The DFT protested and filed further unfair practice charges.

In an effort to help the parties resolve their differences and to head off a threatened work stoppage, the Michigan Employment Relations Commission appointed the undersigned as a fact finder with respect to the parties' dispute.

On Sunday, September 5, 1982, this Fact Finder presided over an initial hearing at which the parties, by counsel, stated their respective positions. Fact finding continued throughout the Labor Day weekend. The Board insisted on rollbacks, reduced from \$23 million (approximately a 9% cut), to about \$20 million (approximately an 8% cut); the DFT resisted giving up more than a wage freeze. At the urging of the Fact Finder, the parties entered into an Interim Agreement at 1981-82 rates for the week of September 7-10, 1982, pending further negotiations and fact finding. School opened as scheduled on September 8 and continued through the end of the week.

However, when the parties were still unable to compose their differences, the Union's membership on Sunday, September 12, voted to strike. Teachers did not report to work on Monday, September 13, and there followed a work stoppage encompassing sixteen (16) school days.

Fact finding nevertheless continued. Eventually through the intervention and encouragement of a citizens' committee, the parties agreed to the following agreement dated October 4, 1982, pursuant to which, teachers returned to work on October 5, 1982, and the parties submitted certain specified issues to this Fact Finder for binding decision:

The parties agree to settle a new Contract in the following manner;

1. The new Collective Bargaining Agreement shall be effective from July 1, 1982 through July 1, 1983.

2. Members of the bargaining unit and students shall report to their respective schools at the usual beginning time on October 5, 1982.

3. Commencing October 5, 1982, members of the bargaining unit shall be compensated at the same salary rate as they were on June 30, 1982. Members who are eligible for degree differential compensation shall receive the same.

4. All provisions of the 1979-82 Agreement not specifically changed during these negotiations shall be carried forward into the new Agreement subject to Paragraph Six (6) below.

5. All proposals tentatively agreed to during the negotiations shall be carried forward into the new Agreement.

6. The following issues which have not been agreed to will be forthwith presented to binding fact-finding.

- a. Regular Emergency Substitutes
- b. Mileage Rate Increase
- c. Loser Pays Arbitration Costs
- d. Non-Receipt of Longevity Pay
- e. Early Retirement Plan Adoption
- f. Dental Insurance Plan Carrier
- g. Length of Teachers' Meetings
- h. Non-Receipt of Annual Increments
- i. Class Size
- j. Common Preparation Periods
- k. Parking on Heavy Snow Days
- l. Distributive Ed Added Cost Supply Fund Increase
- m. Normal Paid Days without Compensation and Time of Compensation
- n. Health Insurance Co-Pay and Deductible
- o. All Available Substitutes--Article XIV, Section B.

7. The Fact Finder shall prepare a fact finding report in accordance with the General Rules and Regulations of the Employment Relations Commission. The report will be issued within thirty (30) days. In the event the Fact Finder requests more time, such extension of time will be granted by the parties. The new time frame shall be communicated to the parties and the public.

The binding fact finding required twenty four (24) hearing days, plus a day of final oral argument on December 7, 1982.^{1/}

^{1/}The Fact Finder had in the meantime requested and received necessary extensions of time, pursuant to the stipulation.

The Fact Finder has reviewed 147 exhibits and testimony from 28 witnesses - a record consisting of over 2,000 pages of transcript.

THE ISSUES PRESENTED

The Fact Finder has been authorized to prepare a fact finding report in accordance with the general rules and regulations of the Michigan Employment Relations Commission concerning the following fifteen (15) issues, which are re-grouped, for clarity, as Board or Union proposals. (The issues and the related positions in evidence of the parties are discussed more fully below.)

A. Board Proposals

The Board proposed economic concessions separately or together, as stated below. The Board asserted that these concessions are necessary because of its financial deficit. The Union replied that none of the proposed concessions are necessary or fair.

1. Non-payment of longevity pay. Under the previous collective bargaining agreement, employees with fifteen (15) or more years of full-time service received a \$250 bonus in December. The Board proposed to eliminate the December, 1982 payment, for a purported saving of \$983,000.

2. Class size. The Board proposed to be excused from the contractual provision limiting class size to 33 in grades K through 4 and 34 in grades 5 through 12. The Board asserted that by increasing class size by 4, it would save \$4 million during the second semester. The Board asserted it could save \$2,052,000 if it could increase class size by 2 during the second semester.

3. All available substitutes--Article XIV, Section B. The Board urged that it be given relief from the contractual obligation to provide "all available substitutes" in the event of a regular classroom teacher's absence on a scheduled instruction day.

4. Regular emergency substitutes ("RES"). The Board proposed to eliminate for 1982-83 the contractually identified pay differential (over daily substitutes) of "regular emergency substitutes" ("RES"). The expired contract stipulated that approximately 250 teachers in this group were to be offered daily employment beginning about the second week of the fall semester and ending about one (1) week before the end of the school year, and that approximately 300 additional teachers would be offered daily employment beginning approximately November 1 and ending approximately May 1. The Board contended that it could save about \$327,500 during the second semester of 1982-83 if the "RES"- "ES" pay differential was eliminated and it paid all substitutes at the "ES" rate.

5. Common preparation periods. The Board asserted that it could save \$4,000,000 during the second semester if it could place the teachers' preparation periods at the end of the school day, thereby eliminating the need for substitutes and other teachers during such preparation periods. (According to the Board, if the common preparation period could be reinstated in the middle schools only, and combined with an increase in elementary class size by two, and an increase in high school class size by 4, the savings, during the second semester, would be \$3.7 million.)

6. Non-payment of annual increments. The Board proposed the non-payment of annual salary step increments during the 1982-83 school year, for a purported saving of \$3.4 million.

7. Normal paid days without compensation and time of compensation. The Board proposed that DFT members work days without pay, the pay to be deferred until the time the teacher leaves the school system. The Board asserted that each payless day would save it \$1.3 million (savings for Board-only-funded salaries would be \$1.2 million, according to the Board).

8. Health insurance co-pay and deductibles. The Board proposed that DFT members satisfy a deductible of \$100 (\$200 for family benefits) and they pay twenty (20%) percent co-payment on all covered benefits up to \$1,000 each year. The Board asserted that second semester savings from this concession would be \$1,050,000.

B. Union Proposals

The Union opposed each of the Board's proposals and made the following proposals of its own, which in each case the Board opposed:

1. Mileage rate increase. The DFT proposed an increase for the 1982-83 school year of the allowed mileage rate, currently 18 cents a mile, to 29 cents per mile.

2. Early retirement incentive plan procedure. The DFT proposed during negotiations that the parties adopt an early retirement plan, to achieve cost savings for the Board (by encouraging the early retirement of more highly compensated, long-time service teachers) while promoting the employment of more DFT members. Specifically, the Union urged this Fact Finder to order subsequent binding fact finding as to this issue if the parties could not reach accord. The Board opposes such subsequent binding fact finding in the event of disagreement on an early retirement plan.

3. Dental insurance plan carrier. The DFT urged that the Board transfer its dental insurance to another carrier, such as Delta Dental, to effect cost savings.

4. Loser pays arbitration cost. The DFT urged that the contract provide that the loser pay all costs of grievance arbitration. The DFT asserted that the Board had been compelling it to go to arbitration unnecessarily on an increasing number of cases, the majority of which ended in decisions favoring the DFT.

5. Length of teachers' meetings. The DFT proposed a contractual provision to limit the length of Wednesday teachers' meetings to one (1) hour, in order to curtail alleged abuses by some principals.

6. Distributive education added costs supply fund increase. The 1979-82 collective bargaining agreement between the parties provided for a \$100 "distributive education" added costs supply fund at each high school where distributive education programs were eligible for this amount of added cost funding. The DFT proposed increasing this amount to \$200, claiming that the \$100 amount was inadequate to purchase needed small supplies.

7. Parking on heavy snow days. The DFT proposed a contractual provision obligating the Board to clear snow on heavy snow days from streets adjacent to schools lacking faculty parking lots.

PREFATORY COMMENTS OF THE FACT FINDER

The essential character of an Employer-Union relationship via its negotiated agreement should by and large be left to the parties in the true spirit of free collective bargaining, the legacy of our American way of life.

Given the authority of the parties to bind them on specific contractual issues, the Fact Finder is nevertheless mindful that to the extent he can accomplish his charge and not disrupt the basic blocks of the foundation molded and fashioned by the parties, he should. More-

over, one of the causal elements in this circumstance is the economic status of the Detroit community - in the most dire economic straits compared to all other major metropolitan cities in the country. It would be foolhardy for this person to provide the Board relief by adding to the burden of the community in the form of teacher layoff. The laying off of even one teacher for merely one day as the means of relief, if other forms of relief are available would be sacrilegious. With these underlying tenets, the Fact Finder carefully reviewed and analyzed the testimony and exhibits placed into the record. The overriding conclusion he reached, with the stark reality of an actual operating deficit as of June 30, 1982 in the amount of (\$36,446,530), that the Board must seek, obtain and sponsor fiscal relief to reverse the continued increase of its operational deficit. Such relief must come from all corners and elements impacting on the Board's operation - managerial, legislative and negotiated.

Although the Fact Finder does not intend to leave an impression that the Board's employees represented by the DFT are responsible for the fiscal budgetary deficit status, he nevertheless feels that the sources for the relief needed by the Board must include this group of employees - a major part of the major expense item in the Board's budget. The DFT Unit membership comprises sixty three (63%) percent of the Board's personnel which constitutes eighty five (85%) percent of the entire budget.

The DFT Union has already agreed to a wage freeze for the school year of 1982-1983. That in itself is rightfully viewed as a major concession and budgetary relief.

The Fact Finder therefore has decided that the relief granted the Board by this Union on behalf of its membership shall be in the form of a loan from each employee as will be detailed in the foregoing award.

The Fact Finder will now move forward on each of the fifteen (15) contractual issues in dispute which the parties placed before him in the unusual position of authority - that of binding Fact Finder. His authority in effect grants him the awesome privilege and responsibility to decide each issue in dispute, which decision is to be final and binding on both parties.

BINDING FACT FINDER AWARD

A. Board Proposals

1. Non-Payment of longevity pay.

The request of the Board to eliminate the longevity forms of \$250.00 to each employee within fifteen (15) or more years of full-time service is respectfully denied. To grant such relief would be in effect cutting the majority of this groups take-home pay for this year.

2. Class size.

The relief sought by the Board through the means of increasing the current contractual limits as to the number of students in a class, would be obtained by the layoff of a sizeable number of teachers for the remainder of this school year. The request is therefore denied.

3. All available substitutes - Article XIV, Section B.

The Board requested it be relieved from the contractual obligation to provide "all available substitutes" to cover an absent teacher on a scheduled instruction day. The static status from "substitute" coverage would be aggravated by the elimination of this contractual obligation, and the cost saving is miniscule. This form of economic relief is therefore denied.

4. Regular emergency substitutes ("RES").

The Board identified a daily pay differential received by the "RES" substitutes over the "ES" substitutes, and asked that it be eliminated

for this year. This relief, even if confined to the second half of the school year in addition to the wage freeze would constitute a cut in the earnings of a group of teachers at or near the lowest rung of pay on the salary scale. Relief from this source of contractual obligation pertaining to this group of employees as such does not seem relatively reasonable and is therefore denied.

5. Common preparation periods.

The Board asserted the scheduling of all preparation periods of the teachers as the last period of the day would provide a substantial relief. It suggested various limits by school levels to effect this monetary relief.

In the Fact Finder's view, the relief sought by the Board by such scheduling would result from the layoff of teachers. Without further analysis and comment on other considerations, as a matter of consistency, he must deny this avenue of relief.

6. Non-Payment of annual increments.

The Board proposed the non-payment of annual salary step increments during the 1982-1983 school year as a means for substantial relief.

One can argue what the teacher has not yet received he/she will not yet miss. This is true when at contract time negotiations on expected or hoped for salary increases are anticipated. In the case of salary step increments, the issue is basically different.

The teacher is told upon employment about stability, security, tenure, competence, etc. The key substance from an economic standpoint is the going rate of the teacher position in respective categories, i.e. B.A.; B.A. + 30; M.S.; etc. The hire-in rate is not the going professional rate. The latter is the salary given a teacher which includes

the last step of the increment scale. The teacher rightfully may anticipate the going professional rate when he/she puts in his/her time at the level of his/her learning. He/she may have made economic commitments on homes, appliances, children's education, etc. To take away the step increase would deny the value of that step both in rank and in pocket.

The Fact Finder is therefore denying the Board's request to obtain economic relief through this issue. Each teacher shall receive the traditional step progressions and pay increments to which they are entitled.

However, he does not intend to burden the Board with the obligation of lump sum retroactivity. Instead he is directing the Board to implement the following procedural steps on behalf of each teacher eligible for an annual step increase this school year and is on the active payroll as of January 15, 1983:

- Step #1 - Each eligible teacher shall have his/her salary adjusted to include the annual step increment due him/her. Such adjusted salary shall be placed in effect in pay period #15 beginning January 15, 1983 and thereafter.
- Step #2 - The Board shall determine the unpaid portion of the annual step increment due each eligible teacher from the beginning of the 1982-83 school year through January 14, 1983.
- Step #3 - Such unpaid amount shall be divided into twelve (12) equal installments. Each such installment shall be paid the teacher on the respective pay dates of pay periods # fifteen (15) through # twenty six (26), in the current school year, 1982-83.

7. Normal paid days without compensation and time of compensation.

It is by this vehicle that the Fact Finder is the most comfortable in providing the Board a portion of the relief it seeks from the DFT in reducing its operating deficit. It sought relief in any combination of categories of expense saving, cost cutting or outright contractual concessions.

The Fact Finder in adhering to the earlier identified concepts eliminated all other Board proposals for fiscal relief except this issue. He has further indicated that any relief he does direct will be offset eventually by a deferred payment arrangement of the amount of relief. He therefore found it necessary to extend the substance and detail of this form of relief, in order to grant that measure of relief he feels the Board needs, as a matter of personal sacrifice and communal concern on the part of each DFT bargaining unit employee.

He directs the parties implement the following detail:

a. The Board shall deduct one (1) day's pay from each of the ten (10) consecutive pay periods beginning with pay period #15 through pay period #24.

b. The Board shall repay such deducted pay by making ten (10) days pay, at the then current prevailing salary rates, as follows, whichever occurs first:

- 1) Beginning with the school year 1984-85, on the first pay date in December of each of ten (10) consecutive school years, one day's deferred payment shall be paid the DFT Unit member.

or

- 2) Upon the permanent separation of the DFT Unit member from employment with the Board, the balance of the deferred pay then owing.

In either event, the salary rates prevailing at the time of required repayment shall apply.

c. All categories of substitutes are excluded from this relief granted the Board.

d. The Board at its option may make deferred payments of the ten (10) days or any balance thereof at any time(s) earlier than the due date(s) stated in Paragraph b of this issue.

8. Health insurance co-pay and deductibles.

The Board touched the most sensitive nerve among the teachers when it sought relief by increasing health care deductibles and sponsored employee co-pay.

In effect, the Board request was sponsoring a new out-of-pocket expense at a moment of ill health. The two-fold combination in this emotional area is too much from which to expect the Fact Finder to provide fiscal relief to the Board. He must reject this request and deny the relief sought.

A. Union Proposals

1. Mileage rate increase.

The use of one's own automobile for school function should not find the owner bearing the burden of subsidizing the cost for that use. Although the economics of these entire negotiations militate against adding costs to the operation of the School District, this Fact Finder does not feel he is flouting the fiscal facts of life by increasing the present eighteen (18¢) cents per mile allowance for official use to twenty one (21¢) cents per mile.

Therefore effective January 15, 1983, the mileage rate referred to in the current agreement (Joint Exhibit #10) under the title Mileage in the second (2nd) paragraph on Page 78 shall be increased to twenty one (21¢) cents.

2. Early retirement incentive plan procedure.

The Fact Finder pondered long hours as to the procedure he should direct the parties to execute, especially with regard to fact finding of issues - advisory or binding fact finding. The results of the parties' mutual effort should provide incentives for early retirement and cost reductions for the Board needs.

His concern regarding binding fact finding centered on the many and varied aspects that will in all probability surface which would have significant impact on the parties' mainstream of relations. Putting such ultimate authority in the hands of a third party must be by agreement at the point of knowledge of the issues. At the same time, concern faced the Fact Finder about this issue and its significance being lost in the shuffle of 1983-84 contract negotiations.

He has therefore fashioned the following procedure and directs the parties to implement its terms:

a. Beginning Tuesday, February 1, 1983 and every other Tuesday thereafter (or any other schedule of days/dates mutually agreeable to the parties) the parties are directed to begin and engage in joint discussions/negotiations to develop the necessary actuarial data for analysis and through good faith collective bargaining hopefully reach an agreement.

b. Failing to reach an agreement by no later than May 3, 1983, the parties shall advise the Michigan Employment Relations Commission of this fact and shall request that Commission to submit a panel of three (3) Fact Finders to the parties for selection of one of them. Such selection process is to be complete by May 17, 1983.

c. The selected Fact Finder shall hold formal hearings on the remaining elements in issue in time to be able to render his formal recommendations to the parties, the Michigan Employment Relations Commission, and the public by June 17, 1983.

d. Since the Fact Finder recommendations are not binding except by mutual agreement of the parties, the parties will make public their respective responses to the recommendations of the Fact Finder, acceptance or otherwise, by June 30, 1983.

3. Dental insurance plan carrier.

The Board is directed to name as its dental insurance carrier Delta Dental or any other carrier listed on Union Exhibit #144 which, in the sole judgment of the Board, could generate cost savings greater than the savings provided by adoption of the Delta Dental plan without changing or reducing the benefits of the present plan. This shall take effect no later than March 1, 1983.

4. Loser pays arbitration cost.

The Union's proposal that the loser pay all costs of grievance arbitration is generally the result of an extended period of alleged abuse and/or misuse of the grievance resolution process.

The actual evidence, despite the claim of increasing frequency and win-loss record, indicates the parties have really not engaged in much arbitration over many years of relationship. In addition, the obligation of labelling a party loser often sponsors the desire for the "loser" to want to be a "winner", thus furthering the potential of more arbitration.

The Fact Finder therefore denies this Union request.

5. Length of teachers' meetings.

The Union's request for this limitation stems from an alleged abuse by some principals. Often in isolation one principal, if guilty of such abuse does not realize the impact of his/her handling of this situation upon all other principals.

At the same time healthy, sound relations between a principal, union and constituents should, whenever possible, be preserved.

The Fact Finder therefore directs that unless the principal and the union agree otherwise in advance, the length of Wednesday teachers' meetings shall be limited to one (1) hour.

6. Distributive education added costs supply fund increase.

The request of the Union for the increase of the present \$100.00 "distributive education" supply fund at each "eligible" high school seems to be a reasonable request. Moreover, it is sought in the interest of the students, not as an economic gain for the teachers personally.

Therefore the Fact Finder directs the fund be increased immediately to \$200.00.

7. Parking on heavy snow days.

Knowing the propensity of the Fact Finder to seek Divine guidance in his search for resolution of each issue before him, his prayers relative to this issue may have something to do with the lack of any snow in Detroit, causing this issue to be moot to date.

Seriously, the Union's proposal, understandable as it may be, is fraught with many aspects the answers to which makes the burden at this time more than should be tackled. To-wit:

- a) Does this call for purchase or rental of snow removal equipment?
- b) Does the worker complement require an increase?
- c) Are the adjacent streets to be designated for school personnel only?
- d) Effect upon community relations.
- e) Relationship with the governmental snow clearing facilities.

The Fact Finder feels at this time that it is not propitious to grant this request and therefore denies it without prejudicing the Union's reasons for such proposal.

CONCLUDING COMMENTS OF FACT FINDER

Despite the inevitable positions of difference and the concomitant evidence of collective bargaining acrimony, including a short work stoppage, this Fact Finder is very much impressed by the characteristics of the parties' representatives and their relations -

- 1. The intellectual level.
- 2. The thorough and fastidious effort and preparation of data and documentation.
- 3. The empathy for each one's personal, professional and institutional responsibility and authority.

He would therefore like to exhort the parties to enter into a program of management-union dialogue where the agenda allows for relationship development and improvement; identification of problems of interest to either or both parties, and possible solutions, without detracting from the parties' contractual or legal rights.

Such meetings would be an ideal prologue to the second suggestion this Fact Finder would urge - that the parties make every effort to enter into meaningful negotiations for the 1983-84 school year at the earliest possible date. Time allows for examination of a more deliberative nature. Lack thereof creates pressure of a distracting nature.

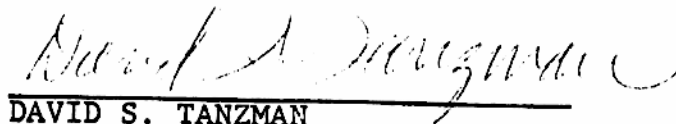
In conclusion, a special acknowledgement of the Detroit Community Citizens Committee, chaired by Reverend Ardrey whose invaluable commitment and contribution on behalf of the Detroit community in this critical circumstance warrants being part of this record.

The parties' representatives, with leadership roles executed by their respective counsels - Attorney George Roumell for the Detroit Board of Education and Attorney Theodore Sachs for the Detroit Federation of Teachers, cannot go without acknowledgement. Not only did they provide every conceivable form of cooperation during the fact finding proceedings, but they facilitated all necessary data and information sought by the Fact Finder. Their professional performance and articulate arguments made the decisions more difficult to reach.

Finally, the cooperation of the Michigan Employment Relations Commission placing all its facilities and staff, professional, administrative, court stenographers and clerical, at the disposal of this assignment, was

utterly essential to execution of this person's responsibilities in his capacity of Fact Finder.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David S. Tanzman", written over a horizontal line.

DAVID S. TANZMAN
Fact Finder

Dated: January 6, 1983