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STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

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In the Matter of Fact Finding)

between )

DeWitt Public Schools )

and )

DeWitt, MESPA )

Michigan Employment Relations  
Commission

Case No. L85 D-427

REPORT OF THE FACT FINDER  
RUSSELL E. PRICE

REPRESENTING THE PARTIES

For the DeWitt Public Schools:

Harry W. Bishop, Associate Executive Director, MASB

Stephen C. Garrett, Superintendent, DeWitt Public Schools

Joyce Kennedy, Business Manager, DeWitt Public Schools

For the DeWitt MESPA:

Jean Cusick, Uniserv Director, DeWitt MESPA

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*DeWitt Public Schools*

## INTRODUCTORY MATTERS

This is a Fact Finding Hearing for the DeWitt Public Schools and MESPA, scheduled for January 7, 1986 at 10:00 a.m. in the Boardroom of the DeWitt Public Schools. This was set for Fact Finding by the Michigan Employment Relations Commission on November 27, 1985. By agreement of the parties, this was scheduled following the fifteen (15) day period from date of notification.

## THE FACT FINDING HEARINGS

In its petition for fact finding, MESPA Uniserv Director, Jean Cusick, cited the following as remaining unresolved issues following the two mediation sessions conducted September 19, 1985 and September 26, 1985: Article VI, Dues and Payroll Deduction, 2 issues; Article XIV, Leaves of Absence, 1 issue on business leave days; Article XV, Holidays and Vacation, 8 issues; Article XVII, Insurance, 5 issues; Article XX, Duration of Contract, 1 issue; Wages, 1 issue; Retroactivity, 1 issue.

### Positions of the Parties:

#### Item 1: Article VI - Dues and Payroll Deduction

The two primary issues under this Article are 1) Dues or an equivalent fee as a condition of employment versus the employer's current contract mechanism which is suspension for failure to pay dues. 2) Whether the current contract grandfather clause which protects two non-association members should be retained. In support of its position, the association referred to its Exhibit No. 2 entitled Agency Shop, which supported the fact that in 16 of the 18 teacher bargaining units, the employee must tender dues or an equivalent fee as a condition of continued employment. Only 4 of the 18 contracts permit part of the bargaining unit to be exempted from the Agency Shop provision. The Union also referred to Exhibit 2-B which indicated that 8 of 11 support personnel contracts require either association membership or a fee as a condition of employment for all bargaining unit members. Therefore, the practice of the industry is to terminate for non-payment of dues. At issue are two non-members who have been non-members since the inception of this bargaining unit.

#### Item 2: Article XIV - Leaves of Absence

The issue under this Article is whether or not bargaining unit members ought to receive 10 sick leave days plus 2 personal business leave days or whether those 2 personal business leave days ought to come out of the 10 days allotted for leave on an annual basis. The

association submitted Exhibit No. 3-C, which is a survey of support personnel contracts in Ingham and Clinton counties, which provide at least one day of sick leave a month. In that survey of 11 bargaining units in different school districts, 8 locals are credited with 2 days of business leave each year in addition to the sick leave allotment. The DeWitt teachers have 2 days for business leave in addition to their 10 sick leave days per year. The second issue under this Article is the employer's proposal that a bargaining unit member work at least 20 hours a week in order to be credited with business days. The association's position is that there ought to be an average of 20 hours per week based on the make-up of the unit. The employer agreed at the Hearing to allow 20 hour per week employees to take 2 business leave days. It was a change in its position. The Board also noted that business leave is not as critical to part-time employees because half of their working days are free to allow the opportunity to conduct private business.

### Item 3: Article XV - Holidays and Vacations

A. The association proposes to expand the application of paid holidays to all bargaining unit members who work an average of 20 or more hours a week. The employer's position is to retain the current contract which requires a bargaining unit member must work 8 hours a day and/or a 12 month year in order to qualify for paid holidays.

B. The association proposes to add the equivalent of one paid holiday for 12 month employees. The employer rejects the proposal and instead proposes current contract.

C. The association proposes that an orderly process be provided in the contract to define the computing or and using vacation with particular attention to the bargaining unit member who becomes eligible for additional time. The employer proposes that the parties retain the language of the current contract.

D. The association proposes to provide 5 days of vacation during the first year of employment and to consolidate the last 2 levels of vacation credit into 1 level. That would provide employees four (4) weeks of vacation after 15 years instead of 18 days after 16 years and 20 days after 21 years. The employer rejected that proposal and seeks to retain the current contract provisions.

E. The association proposes to continue the overtime provision in connection with any work performed on holidays. The employer's last proposal deleted the provision for overtime pay for work performed on holidays.

F. The association proposes a procedure be provided in the contract for employees to submit vacation requests. The employer had rejected that proposal.

G. The association proposes a procedure to included in the contract to provide for those occasions when sick leave occurs during a vacation. The employer opposed that proposal.

#### Item 4: Article XVII - Insurance

A. The association proposes fully-paid health insurance for the bargaining unit members. The employer proposes to provide 90% of the health premium for bargaining unit members. The employer's position is based on the fact that when an employee pays 10% of the insurance premium, it gives the employee a feeling for what is actually happening in this insurance field. The employer stated that the 90/10 split at least lets the employee do some shopping and makes them aware of what's going on in that particular area.

B. The association proposes bargaining unit members who work 20 or more hours a week should receive the fully-paid health insurance. The employer's position was that health insurance should be provided only to those employees who work 27½ hours a week or 5½ hours daily. The employer agreed to protect three (3) bus drivers presently covered under the current contract who would otherwise be excluded by this new provision.

C. The association proposes that bargaining unit members who do not need health insurance be provided an amount equal to the single subscriber health premium to be applied toward non-taxable health options and/or an annuity. The employer proposes to provide \$60.00 a month toward non-taxable annuity program.

D. The association proposes dental insurance for bargaining unit members who work 20 or more hours a week. The employer proposes to provide dental insurance for those employees who work 27½ hours per week or 5½ hours daily.

E. The association proposes to name the insurance carriers and designate the plan coverage for all insurance benefits in the contract. The board proposes that it shall select the carrier for all insurance benefits provided in the agreement.

#### Item 5: Article XX - Duration of Contract

The association proposes a 2 year agreement. The employer proposes a contract for a 3 year term. The current contract expired June 30, 1985. Therefore, the association proposes that the 2 year

contract would run from July 1, 1985 through June 30, 1987. The employer proposes that the contract run from July 1, 1985 through June 30, 1988.

#### Item 6: Wages

The association proposes a 5½% increase for all rates each year of the contract except for the 02 Secretary classification and the 05 Chief Custodian classification as demonstrated on the association's Exhibit No. 27. It is explained that classifications 02 and 05 were red-circled during the last round of negotiations in 1982. The association's proposal now in 1985 for the 02 and 05 classifications is a catch-up effort which takes into account the hourly rate each bargaining unit member would have earned had he not been red-circled. This would require a \$1.31 increase or a 23½% catch-up for the 02 classification, and it would require a \$1.31 increase or a 13% catch-up increase for the 05 classification. This is a special wage adjustment situation for 2 classifications only. The employer's position was that those 2 classifications were red-circled in good faith bargaining in 1982 and therefore, they should not now be changed. In regard to the across-the-board increase, the parties are 1% apart. The association, being at 5½% across the board increase, and the employer being at a 4½% across the board increase. The employer submitted 2 exhibits relevant to the wage issue, Board Exhibit 1 being the Consumer Price Index which illustrates that the CPI-W increased by 3.4% through November of 1985. The employer also submitted Board Exhibit No. 3 which contains the 1985-1986 salary increase percentages for 14 capital area schools in which the average increase is 5% for the classifications affected in this fact finding hearing.

#### Item 7: Retroactivity

The association requests the new wages be made effective July 1, 1985. The employer does not take issue with July 1, 1985 provided that there is timely ratification of the contract by the bargaining unit.

### FINDINGS OF FACT AND RECOMMENDATIONS

#### Item 1: Article VI - Dues and Payroll Deduction

I find that it is appropriate to consider association Exhibit No. 2-B entitled Agency Shop, which documents that 8 of 11 support personnel contracts require either association membership or a fee as a condition of employment for all bargaining unit members. Accordingly, it is appropriate to go to a legal agency shop clause in this contract which changes the contract enforcement mechanism from suspension to termination of employment for failure to pay either dues or equivalent fees to the association. I would also recommend that the

contract continue to contain a clause to provide that the 3 current employees who were not members of the association as of October 24, 1979 who are bonafide contributing members of a religious body or sect which objects to unionization on the basis of religious tenants may contribute in lieu of union dues or the service fee required by the agreement an equivalent sum of money to a non-religious, non-political, non-profit charitable organization. This was the provision recommended by the legislature to public employers and labor organizations when the agency shop provisions were made permissible under state law.

Item 2: Article XIV - Leave of Absence

Even though association Exhibit No. 3-C documents that 8 of the 11 area locals do credit 2 days of business leave each year in addition to the sick leave allotment, I find that this should not be included in the DeWitt support contract. The reason for this is that it is not as critical to part-time employees because they have half days free which allow them the opportunity to conduct private business during that time. The board resolved the second issue under business leave at the Hearing when it agreed to allow employees who work 20 hours per week to take 2 business leave days.

Item 3: Article XV - Holidays and Vacations

A. The association Exhibit No. 5 indicates that almost every school in the Lansing area provides paid holidays for its support personnel for the hours normally assigned to work, which is not disputed by the employer. Therefore, it is my recommendation that the employer should grant pro-rata holiday pay for all regular part-time employees in the bargaining unit for any of those 6 named holidays in the current contract which fall during the time such part-time employees would be normally assigned to work.

B. The association proposal to add one holiday per year for 12 month employees to increase from 7½ paid holidays per year to 8½ paid holidays per year was supported by association Exhibit No. 4, again is a substantial cost increase as indicated on Joint Exhibit No. 3. In order to keep the fringe benefit costs as reasonable and as possible to change in one contract, I would recommend that the employer's proposal regarding holidays be maintained.

C. The association proposal to explain holiday qualification in the contract was settled at the hearing per association Exhibit No. 9. Both parties agreed to the language as follows: "Vacation time for 12 month employees shall be computed from each bargaining unit member's last date of hire and shall be credited on his anniversary date."

When a bargaining unit member qualifies for additional vacation time as listed below, he shall be credited with a pro-rated portion of the new amount of earned vacation. Said vacation time shall be available for the bargaining unit member's use as of his anniversary date and through the end of the fiscal year. On July 1 immediately following his anniversary date, the bargaining unit member shall be credited with the full amount of new vacation time earned."

D. The association proposal to describe in the contract the procedure for submitting vacation requests was settled and agreed to by both parties at the hearing. This language is contained in association Exhibit No. 10 as follows: "All requests for vacation shall be submitted to the immediate supervisor at least 2 weeks in advance of the intended use of vacation time. Should more than one bargaining unit member request the same vacation dates at a time when the schedule of work prohibits all of the requesting unit members from being absent at the requested times, the unit member having the greatest seniority shall be granted his preferred vacation dates, provided, that such does not adversely affect the operation of the district.

E. The association proposal to describe in the contract the procedure to be followed when sickness occurs during a vacation was settled at the hearing and agreed upon by both parties according to the language as contained in association Exhibit No. 11 as follows: "Should a bargaining unit member become ill while on vacation, his remaining vacation days may be rescheduled as sick leave days subject to the sick leave provisions of this agreement."

F. The association proposal to add 5 days vacation during the first year of employment and to combine the last 2 levels of vacation so there would be 4 weeks of vacation after 15 years instead of 18 days after 16 years and 20 days after 21 years is covered by association Exhibit No. 8. Exhibit No. 8, while containing 11 school districts only shows that 3 of them grant 4 weeks of vacation, none of the other school districts go as high as 4 weeks. In addition, only 2 employees have 18 years seniority in the entire bargaining unit. For what will ultimately be a considerable cost, it is the recommendation of the fact finder that the present vacation schedule remain as is in the current contract until more employees have attained the years of service to be affected by the proposed changes.

G. The association proposes to continue the overtime provision for double-time for work performed on holidays. This was settled at the hearing pursuant to association Exhibit No. 6. It was agreed by both parties to retain the current language of the contract to provide for double-time for all hours worked on holidays.



H. The association proposed that the current contract language be retained to provide that all holiday hours worked or not worked for which a bargaining unit member is compensated shall be regarded as hours worked for purposes of computing over-time. This language as is contained in association Exhibit No. 7 was agreed to by both parties at the hearing.

Item 4: Article XVII - Insurance

A. The association proposed that the employer go to 100% of insurance premium cost and the employer's position was that it remain at 90% of cost. This is a philosophical difference and as stated by the employer's representative at the hearing, it is the employer's philosophy that co-payment of the insurance premium, even though it be only 10% on the part of the employee, gives the employee a feeling for what is actually happening in the field, it encourages them to do some cost comparisons and makes them aware of what is happening in the particular area of insurance coverage and cost. As indicated on Joint Exhibit No. 3, the association has proposed increasing the cost for health insurance by 100%. The parties have a difference therefore, on that issue of \$33,000.00 per year, a substantial amount for this bargaining unit.

In addition, association Exhibit No. 12, pertaining to support group and association Exhibit No. 13, pertaining to teacher group, documents that the association wants to equalize insurance benefits between the support group and the teachers group. The employer's response to this proposal was that these are not proper units for comparison and that their wage and fringe benefits cannot be equated. The employer has offered to improve support group insurance benefits from present contract amount of \$44.75 per month per employee to \$60.00 per month per employee for an annuity as an option to health insurance coverage.

Also, the employer offered in the second year of the contract effective September 1, 1986, to increase the life insurance from \$5,000. to \$10,000. for employees with health insurance coverage and to increase it to \$15,000. for employees without health insurance coverage. Also the employer has offered \$40.00 per month per employee for annuity for 20 hour employees for the first time under the new contract.

Both parties have agreed to Blue Cross/Blue Shield for the new Underwriter of the health insurance program for support employees.

The employer has further agreed to make a grandfather clause in order that the three bus drivers who are currently covered under the health insurance program will continue to have their health insurance provided and that the new 20 hour per week requirement would not eliminate those 3 bus drivers presently covered.



The association Exhibit No. 19 entitled Fringe Benefit Comparison for Support Personnel in Ingham and Clinton Counties demonstrates the pattern for the area support units. The 27½ hour per week requirement by the employer here is comparable for insurance benefits. Five of the eleven school districts covered on this exhibit require 27½ hours per week or more for coverage. Seven out of the eleven are fully paid by the employer.

The association Exhibit No. 20 entitled Effect of Changing Underwriters and Adding the MESSA Care Rider on Employer's Health Insurance Premium demonstrates that there is a 12% savings for the employer in changing to Blue Cross/Blue Shield and an additional 5% savings for the employer in adding Blue Cross/Blue Shield MESSA Care Rider. This was agreed to in principal by both parties.

The association Exhibit No. 24 entitled Likely Cost of Association's Proposal Based on a Mix of those Currently Eligible shows the additional cost of reducing the requirement to 20 hours worked per week in order to obtain full benefits for health insurance. This cost would be an additional \$21,074. per year, or 4.36% of the total unit payroll. That is, this would be equivalent to a 4.36% across the board wage increase for the entire unit. It is the finding of the fact finder that this is not realistic or possible for an employer to accomplish in one year. Again, this is illustrated on Joint Exhibit No. 3, which shows that the association proposal for health insurance would increase from \$33,728. per year to \$69,638. per year for over a 100% increase.

The association's Exhibits No. 25 and 26 are comparisons of contracts in the Lansing area where the insurance carriers are named. The survey does establish that most contracts specify the insurance carrier in the contract. The DeWitt contract leaves that up to the employer. The trend is to leave it up to the employer. The bargaining in good faith required by Michigan Employment Relations Act would not permit the employer to unilaterally reduce the health insurance benefits and therefore, if the health insurance benefits were reduced when the employer changed carriers, that would be a prohibited unfair labor practice. Therefore, it is the recommendation of the fact finder that the contract continue to leave the naming of the insurance carrier within the discretion of the employer.

The most comprehensive dispute between the parties in this contract negotiations are those contained under the insurance heading. In that respect, the employer has proposed to increase contract fringe benefits during the 1985-86 contract year by 11½%, or \$14,000. in addition to the current existing fringe benefit cost per year of \$121,000. (See Joint Exhibit No. 3). On the other hand, the association proposes to increase contract fringes by 59%, or \$71,000. in the 1985-86 contract

year in addition to the existing fringe benefit cost of \$121,000. per year. A one year increase of that magnitude does not appear to be possible for the employer, and therefore, it is the fact finder's recommendation that the employer's proposal should be accepted regarding fringe increases in insurance as modified at the Hearing.

#### Item 5: Article XX - Duration of Contract

As stated above in the position of the parties, the association proposes a two year contract effective July 1, 1985 through June 30, 1987, and the employer proposes a three year contract effective July 1, 1985 through June 30, 1988. Ordinarily, the parties would have had the first two years of this contract negotiated by this time, but in view of the fact that they are still in negotiations for the first year of this contract, it is a time and cost benefit for both parties to have the entire three year contract settled presently and provide the parties with one year of labor peace. Therefore, it is the recommendation of the fact finder that the employer's proposal for a three year contract be implemented.

#### Item 6: Wages

The association Exhibit No. 27, entitled Salary Schedule shows two basic issues here. The first issue is a special wage adjustment for two classifications, 02 Secretary and the 05 Maintenance Foreman. The discussion of the parties at the hearing brought out that there are only two employees out of 59 which are affected by this issue. These two employees should not be penalized for the term of another multiple year contract. This is not a major cost item because it only affects two employees. The job responsibility of each of these classifications appears to justify a wage differential and it is not unreasonable as proposed by the association. There should be differentials between labor classifications of a magnitude which justifies the higher responsibility of each respective job classification. Even though this red-circling of these two classifications was mutually agreed to in 1982, it is now a new issue and must be resolved between the parties. It is the recommendation of the fact finder that the two classifications be increased as proposed by the association in order to make the appropriate catch-up which takes into account the hourly rate each of those two bargaining unit members would have earned had he not been red-circled.

In regard to the second issue of the 4½% across the board increase proposed by the employer versus the 5½% across the board increase proposed by the association, neither of the parties offered evidence of comparable wage rates in the other area schools. Therefore, I cannot find that the employer's offer does not compare favorably with comparable contract units.

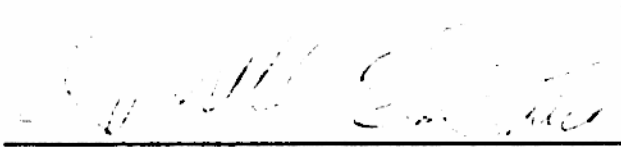
In addition, the BLS CPI-W for 1985 was only 3.4% as of November, 1985. 4½%, therefore, does compare favorably with that. Therefore, it is the recommendation of the fact finder that a wage increase of 4½% across the board be implemented upon ratification by the effective employees for the 1985-86 contract year, the same increase again in the 1986-87 contract year, and the same increase again in the 1987-88 contract year. Each increase should be effective July 1 of each respective contract year.

Item 7: Retroactivity

The association requested that the 1985-86 increase be retroactive back to July 1, 1985, and the employer stated that that was not now an issue, and therefore, it is the recommendation of the fact finder that such wage increase be retroactive to July 1, 1985.

CONCLUSION

The above Report, along with the Index to Submissions attached hereto, represents the Findings of Fact and Recommendations arrived at following the hearing conducted by the Fact Finder. Originals of the Exhibits have been submitted to the Michigan Employment Relations Commission.

  
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Russell E. Price

Dated: January 20, 1986

JOINT SUBMISSIONS

1. Agreement between the DeWitt Public Schools Board of Education and the Michigan Educational Support Personnel Association effective July 1, 1982 through June 30, 1985
2. Master Agreement between the Board of Education of the DeWitt Public Schools and the Ingham Clinton Education Association, dated August 30, 1984
3. DeWitt Fact Finding Health Insurance at Present and Association Proposal

## UNION SUBMISSIONS

1. K-12 Bargaining Units Represented by the Michigan Education Association in Clinton and Ingham Counties
2. Agency Shop
3. Business Leave
4. Current Paid Holidays
5. Holiday Pay Eligibility
6. Overtime for Work Performed on Holidays
7. Overtime Pay Provisions
8. Vacation Days/Years of Service
9. Vacation Eligibility
10. Other Issues Regarding Holidays and Vacation Time Which Need Clarification
11. Association Proposal, Article XV, Section E
12. Current Fringe Benefits
13. Fringe Benefits for DeWitt Teachers
14. Union Proposal on Fringe Benefits, 1985-86
15. Employer Proposal on Fringe Benefits, 1985-86
16. Union Proposal on Fringe Benefits, 1986-87
17. Employer Proposal on Fringe Benefits, 1986-87 and 1987-88
18. Fringe Benefit Comparison for Educators in Ingham and Clinton Counties
19. Fringe Benefit Comparison for Support Personnel in Ingham and Clinton Counties
20. Effect of Changing Underwriters and Adding the MESSA Care Rider on Employer's Health Insurance Premiums
21. Current Cost of Super Med I/Equitable Annually
22. Cost of Employer's Health Insurance Proposal
23. Potential Cost of Association's Eligibility Proposal
24. Likely Cost of Association's Proposal Based on a Mix of Those Currently Eligible
25. Comparison of Contracts Wherein Insurance Carriers Are Named
26. Comparisons of Contracts Wherein Insurance Carriers Are Named
27. Appendix A: Salary Schedule
28. Duration of Agreement

## EMPLOYER SUBMISSIONS

1. Consumer Price Index
2. 12 Month Employees and 10 Month Employees
3. 1985-86 Salary Increase Percentages, Capital Area Schools
4. Association Wage Proposal for a 09 Cafeteria Worker