

**MICHIGAN EMPLOYMENT RELATIONS COMMISSION
STATUTORY FACT FINDING TRIBUNAL**

In the Matter of Fact Finding between:

ECORSE PUBLIC SCHOOLS

and

ECORSE FEDERATION OF TEACHERS, AFL-CIO, LOCAL 1425

MERC Case #D88 I-2047

FACT FINDER: Richard H. Potter

APPEARANCES:

For the Employer:

George G. Newman, PC - Attorney for the Board

For the Union:

Henry B. Linne - Secretary-Treasurer, Michigan
Federation of Teachers

INTRODUCTION:

The last agreement between the parties expired on Labor Day 1988. According to the parties, only a few bargaining sessions were held prior to the expiration of the contract and approximately 15-18 short sessions, including those with a MERC-appointed mediator, held subsequent to the contract expiration. A work stoppage, which began on 9-18-89, continues at this time.

On 9-13-89, MERC appointed the undersigned as fact finder. A preliminary meeting was conducted on 9-13-89 with a hearing on 9-18-89, which was continued on 9-21-89.

Ecors Public Schools

At the 9-13-89 meeting, the parties listed the outstanding issues as follows:

1. Sick leave accrual
2. Salary
3. Insurance benefits
4. Longevity pay
5. Extra teaching assignment compensation
6. "Subject Area Assignment" and split class compensation
7. Teaching a sixth period

At the preliminary meeting, the parties related that originally a MERC Administrative Law Judge determined that the Ecorse School Board had not committed an unfair labor practice by refusing to bargain the implementation of a sixth class period within the teaching day. MERC overruled the ALJ and was affirmed in an appeal to the Michigan Court of Appeals. The Supreme Court refused to hear the case. The order of MERC required the Board to bargain with the Union regarding the establishment of the sixth period and compensate the affected teachers. The parties were unable to agree on the compensation to be paid and on who were the affected teachers and so asked MERC to hold a hearing to decide the compensation issue. That hearing has been held and MERC is awaiting briefs from the parties.

The undersigned told the parties at the preliminary meeting that the sixth hour issue was now before MERC and that it would not be addressed in fact finding. After actually reading the MERC order, however, the undersigned informed the parties that although the issue of

compensation was properly before MERC, the issue of the number of class periods was properly a subject of the fact finding. That decision was made notwithstanding the belief that MERC's order to bargain was not properly complied with since only minimal efforts were made to bargain and perhaps only one meeting was held on the issue.

BACKGROUND:

The Ecorse School District covers an area of approximately 2 3/4 square miles in the Southwest corner of Wayne County. The district is housed in four deteriorating buildings (a fifth was closed down during the summer of 1989 for structural problems). The state equalized evaluation (SEV) declined steadily between 1981-82 through 1987-88 and suffered particularly when Great Lakes Steel moved out of the district (see exhibit 26B). School enrollment has also declined steadily from a high of 2,612 in 1979-80 to 1,776 in 1988-89. The Board anticipates another drop for the current school year to 1,662 (see Exhibit 24B). The decline of 17.9% in the last four years ranks Ecorse at 33rd of the 34 school districts in Wayne County and contrasts with an average decline of 5.34 percent. Ecorse is an "in formula" school district meaning that a portion of its revenue comes from the State of Michigan based upon a per student formula. Thus, these declines in students translate into reductions in state aid.

The fact finding also takes place against the backdrop of the community financial situation. Currently the City is under direction of a court appointed receiver after the much publicized "bankruptcy." The receiver has made recommendations to ask for tax levies to take care of

certain indebtedness of the City. To date these recommendations are 2 mills for 1988, and 6 mills for 1989. The Board introduced Exhibit 27B, which contained a letter from the receiver that he planned to recommend 6 mills again for 1990. The two previous requests were granted by the court and there is little doubt that the request for 1990 will be granted as well.

DISCUSSION OF ISSUES:

Accrual of Sick Leave: Currently, bargaining unit members receive a grant of fifteen sick days at the beginning of each school year. In theory, a teacher could be sick the first fifteen days of the school year and receive sick leave for these days. Bargaining unit members may accrue sick leave from one year to another without limit. There is an incentive for a teacher to accumulate sick leave since upon retirement he or she will receive 1/2 day's pay at the current pay rate for each sick day. If the teacher leaves for any reason before retirement, he or she will receive 1/4 day's pay for each sick day.

The Board proposes that instead of days being granted in total at the beginning of the year, teachers accrue sick leave throughout the year. The rationale is that this proposal will address abuses of sick leave that the Board believes are currently occurring. The Board believes the fifteen-day grant is a temptation for those who would abuse sick leave and encourages abuse. The Board also stated that the proposed method of accrual is an accepted practice in business and industry.

The Board did not provide any evidence of abuse, either in terms of specific instances of abuse or of numbers of teachers with various levels of accrued sick leave. Nor did it provide any evidence beyond general assertions that the proposed method was the general practice in business and industry, though from the fact finder's knowledge, that does seem to be the practice. The Union presented limited evidence (Exhibit 3F) that the common practice in the Tri-County area is for districts to provide a grant of sick leave at the beginning of the year, just as Ecorse does currently. At the hearing the fact finder pointed out that it would probably be only the junior teachers that would be affected, since teachers with any length of service with the system would have a beginning balance of sick leave anyway and thus would not be impacted. This observation was not contended by the Board.

In the absence of any evidence of a problem with sick leave, and in light of prevailing practice, there is little support to change the current practice.

Salary: The Federation's position is that the Ecorse teachers' salaries should be at approximately the average for Wayne County teachers. To accomplish this, the Union demands a 12 percent retroactive increase for 1988-89 and an 8 percent increase for each of the succeeding three years.

The Board's position is that as deserving as the Ecorse teachers may be, the District simply cannot afford to provide such raises. Instead they propose 0 percent for 88-89 and 3 percent for each of the

succeeding two years. The Board asserts that to provide any greater increase will drive the district into deficit, which by law is illegal. In supporting its case of inability to pay, the Board provided evidence in the following areas:

1. Taxation: The Board presented evidence about recent millage elections which included the following from Exhibit 35B.

Request	Date	No. Voting	Margin of Victory (Defeat)
30 Mill Renewal	2/88	800	59.5
10 Mill Increase	12/85	2,634	55.9
10 Mill Increase	10/85	2,177	(55.9)
20 Mill Increase	12/80	1,177	51.1

The Board points to drastic declines in the number of voters between the '85 and '88 elections as a demonstration of the lack of support for schools in the community. The Board also stated it believed that it was unrealistic to ask the voters for additional millage at this time given the state of the city government and the burden of the 6 mills levied by the court. These statements weren't directly contested by the Union, but do not seem to be supported by recent election history which demonstrates that the Ecorse district voters have not been asked to bear a heavy burden and when asked they have generally responded positively.

2. District Financial Position: The Board submitted a financial projection prepared by the accounting firm of Barrow, Aldridge & Company which projected deficits for the years 1988-89, 1989-90 and 1990-91 (Exhibit 238). The report was based upon the 1988-89 proposed amended budget of the Board as well as school aid estimates provided by another firm and based upon enrollment estimates of the Board. The Board also provided a detailed undated 1988-89 budget report that projected a deficit of \$717,325 for the year just ended. By the same token, the District demonstrates a history of very conservative and not very accurate projections. In the last several years, projections have often indicated the District faces a deficit only to have it end the year with significant additions to fund equity. For example in 1984-85 the District year-end budget (after the millage increase election) projected an addition to fund equity of \$459,000 which turned out to be \$633,000 at the time of the audited financial statements.

In 1986-87, the year-end budget projected a deficit of \$66,000, while the final audit report showed an increase of in fund equity of \$132,611. In 1987-88, the budget projected a deficit of \$57,881, where fund equity increased by \$320,000. In the year just ended, the District currently expects an addition to fund equity of \$891,384, while earlier projections have indicated a deficit ranging from \$321,000 to \$1,020,000.

Finally, the 1989-90 deficit was projected to be \$329,000 on 7/31/89 and \$717,000 on 8/31/87; more than doubling in a month. Even taking into consideration the vagaries of budget projection, this experience causes doubt on the degree to which the Board's projections may be relied.

3. Expected Judgment: As mentioned above, a MERC ALJ will make a determination in the next few months as to the amount owed by the District to the teachers affected by the "six period-day" issue. The Board, of course, has no knowledge of how much the eventual cost will be, but is currently estimating that it will be a total of \$1.2 million. The Board is currently planning to pay for this judgment in the 1989-90 and 1990-91 school years and is beginning to plug in \$600,000 in each of these two years.

There are several others ways this judgment could be handled. For example, several years ago the Board could have begun providing a means for paying for the judgment either by purchasing annuities or setting aside a reserve for the anticipated liability. An even more likely opportunity was presented when MERC ordered the parties to bargain the issue. The Board and Union could have vigorously sought alternatives and indications are a number of options may have been available. The record appears that any efforts to find a solution were feeble at best. The record indicates only one proposal (to pay the judgment over a period of years by

purchasing an annuity) was explored. Finally, the Board could sell bonds to pay for the liability and for a small increase in millage, pay for it over several years. As Board Exhibit 34 demonstrates, the District is 23rd of 34 districts in Wayne County in terms of the millage levied. Ecorse is currently levying 38.65 mills with the range in Wayne County extending from 26.6 mills to 52.86 mills.

The Board, of course, argues that the voters simply wouldn't pass any more taxes. The voting record does not so demonstrate. The Board made issue of the fact the court-appointed receiver has levied six mills, but provided no evidence of the total tax burden of the residents of the district, thus leaving the fact finder to believe that it isn't terribly high.

Admittedly, it also seems somewhat disingenuous for the Board to in effect state to the Union "the reason we cannot give you any raises is that five years ago we committed an unfair labor practice against you and subsequently did nothing to mitigate the damages."

4. State Equalized Evaluation: The Board pointed out that the District's SEV had been dropping for a number of years and had taken a severe drop as a result of the Great Lakes Steel Company departure. An analysis of the District's SEV confirms that drop (see Exhibit 46F). This means that each mill will produce fewer dollars and indeed that is the case, with the

SEV dropping from a high of \$222.1 million in 1981-82 to \$145.3 million in 1988-89. It appears that the decline has stopped, however, and the District is planning for a slight increase in 1989-90. As a result, tax receipts per student are expected to rise somewhat in the next few years.

The Union pointed out that it is likely that the Board will not be in formula for the 1989-90 school year and that could work to the District's advantage. The Board agreed that there would be a temporary gain but felt that to be out of formula could work to the long run disadvantage because of the loss of entitlement funds. The Board did not back up that contention with any evidence.

5. Salary Ranking by District: The Union, as stated before, contends that the Ecorse salary schedule should be at the average of the Wayne County schedule. The only evidence to support this contention was Exhibit 13F, which shows the ranking of school districts by county for 1983-84. This Exhibit shows Ecorse School District 22nd of 37 units surveyed. Since only one year is provided, no conclusion can be made as to where Ecorse properly ranks. Indeed, this does not support the contention that the District should be at the average of the county.

Moreover, one must consider that Ecorse has suffered an almost 18 percent decline in students in the last four years, has had the largest drop in state equalized evaluation in the

county in the last three years and ranks 23rd of 34 districts in the amount of operating expenditures per pupil (see Exhibit 34B). There seems to be little support for the contention that Ecorse teachers should be at the average of Wayne County teacher salary rates.

Extra Teaching Assignment: This refers to pay received by teachers for work over and above their basic contract. Most of this work is done on a voluntary basis and therefore a teacher is free to accept or reject the work. The only exception is when a teacher is required to substitute teach during a preparation hour or time when he or she would not otherwise be on duty.

The position of the Union is that the current hourly rate of \$9.00 per hour is less than the rate for an outside substitute (currently set at \$10.00 per hour). As a result there is an incentive to get a member of the bargaining unit at a lower cost than to get a substitute at a higher cost. In its brief, the Union suggests a raise to \$12 or \$14 per hour.

The Board proposes no change.

Neither party presented evidence of the extent of extra teaching assignments or the cost to the Board of extra assignments, and little mention was made of the subject in briefs. Therefore the fact finder can only conclude that extra teaching assignments are of little consequence.

However, the logic of the Union's argument for a small increase is persuasive. Moreover, the logic of paying a teacher's hourly rate for any non voluntary substituting over and above the teacher's basic contract is also persuasive.

Subject Area Assignment: This issue refers to the number of "preparations" or different courses a middle school or high school teacher is required to teach. The Union proposes that the number of preparations be limited to three and that in the event a teacher is required to have more than three preparations, he or she be paid \$1,000 for each semester for each preparation over three.

The Union submitted Exhibit 3F, which shows selected contract provisions for area districts. Only six districts are shown to make provision for the number of preparations, indicating that there is no "industry" standard with regard to this subject.

The Board's position stated in its brief is that it should, as a management right, have the right to assign personnel as the situation warrants.

On its face, it isn't equitable if the Board is scheduling teachers in such a way that some teachers have very few preparations while others have many. However, no evidence was presented that this is the case. One witness gave the example that she had five preparations during the last school year and that similarly qualified teachers had three. However, this certainly could have been an anomaly and no one seemed to know how pervasive the problem was currently. The Union witness stated in the hearing that the fact that so few districts' contracts contain

any mention of this issue only indicates that it may not be a problem in those districts. Not enough evidence was provided that it was a significant enough issue for the fact finder to recommend a contract provision to cover the matter in this district either.

Split Classes: Split classes occur when an elementary teacher has students from two different grade levels in a class. The Union's position is that teachers who are so situated should receive \$2,500 extra for each semester to compensate for the greater burden of teaching students at different grade levels. The Board stated that it regrets having to have split classes and only does so when there is no other alternative. It stated further that when it was required to offer split classes, the total number of students in the class was less than average to try to lighten the load of the teacher. Both parties agreed that there were currently no split classes in the district.

No evidence was provided as to the past incidence of split classes or the size of such classes when they do occur. Moreover, no testimony was given as to the balance the greater burden of having two grade levels in a single class and the lessor burden of having fewer students. Finally, no evidence was provided as to how other districts handle this issue. In short, not enough evidence was provided for the Fact Finder to give a recommendation.

Six Period Teaching Day: Following the removal of accreditation by the North Central Association of Colleges and Schools, the Ecorse School District increased the number of class periods within the school year at the beginning of the 1983-84 school year. The move was made in a

response to a criticism in North Central's report and was made unilaterally by the Board without consultation with the Union. The Union brought an unfair labor practice charge of refusing to bargain against the Board. A MERC ALJ rejected the charge, but an appeal to the entire Commission MERC found for the Union and ordered the parties to bargain both on the number of class periods and the compensation due the affected teachers. The Court of Appeals affirmed MERC's decision. A review of the documents provided reveals the parties had one meeting explicitly on these issues and that they were outlined briefly in at least two other meetings. It appears the Union made a proposal regarding the number of periods and the Board made a proposal on compensation and neither was countered or discussed in detail.

At the request of the parties, MERC is considering the compensation issue and will rule on it in due course. The only issue before the Fact Finder is the issue of the number of periods in the day. At present, there are three proposals with regard to the issue (see Exhibit 57B)

1. Retain the current schedule of eight periods including lunch
2. Union Proposal #1 - Eight 55 minute periods with some teachers beginning at 7:15 and others at 8:15.
3. Union Proposal #3 - Seven 55 minute periods

The first option causes problems in that it is difficult to consistently provide the contractually required 55-minute preparation period. It also reduced the instructional time for each class period. Other complications include providing more time prior to or after school

for students to be hanging around school, periods have a different beginning and ending time for each period and class periods of different lengths.

The second proposal solves some of the problems of the first in that it resolves the problem of the preparation period and it reduces the teachers' load to seven periods per day including lunch and a preparation period.

The third proposal addresses most all of the concerns of the first two. It provides the six periods required by NCA and eliminates time at the beginning and ending of the day when students would be hanging around. Moreover it provides a common end to the school day so extra curricular activities are easier to schedule. The instructor contact time in each period is also greater and the opportunity for "open" schedules is reduced. Class size will be reduced but remain within contracted limits.

Longevity: The Board's position is that it cannot afford any improvement on longevity.

The Union provided detailed information on longevity in the form of Exhibit 32F, which demonstrates almost every conceivable combination of figures used somewhere in the Tri County area for longevity. In most districts, lump sums are added to a teacher's base salary at certain points (e.g., the 16th year, the 21st year, 26th year). A few districts add a sum each year, such as Ecorse does each year after the 16th. In most cases, these are round numbers (\$300, \$500, etc.) but in a few cases such as Inkster, the amounts are \$211, \$492, \$774. . . The

intervals also vary considerably. For example, Pontiac's contract provides for \$200 at the 12th year and \$1,500 at the 30th year, while Van Dyke's contract provides for \$300 at the 12th, 13th and 14th year. In short, very few patterns emerge.

The Union states in its brief that 43 districts provide for more longevity pay at Step 30, with those districts' longevity ranging from \$774 to \$5,427 and Ecorse's being \$770. However, 27 districts have no longevity at all, so, in fact, Ecorse isn't 44th of 57 districts, but 44th of 84.

Health Insurance: The Union proposes replacing the current Blue Cross/Blue Shield program with the AFL-CIO trust "3-star" program, which is underwritten by BC/BS. The benefits of the 3-star program are certainly more comprehensive than the current program, as outlined in Exhibit 30F. The Union contends that the benefits of the proposed program are more in line with the benefits received in other districts in the Tri County area, a contention that is supported by Exhibit 31F, which indicates that 66 districts have a better health care plan and only 14 have a plan similar to that of Ecorse. Moreover, the Ecorse benefits in life insurance, dental insurance and disability are toward the bottom of the districts in the Tri County area. In 1985, Fact Finder Ganos recommended a moderate short-term disability insurance program because such protection was provided for the operation and maintenance unit, but the recommendation wasn't accepted.

The costs of medical insurance are difficult to assess. The Board states in its brief that it has incurred an 11 percent increase in health care cost for all employee groups for the 1989-90 school year. The Union's proposal would mean a 20 percent increase in costs and it estimates that the current plan increased in cost by over 15 percent (see Exhibit 50F). The Board presented no figures so it is impossible to say if this unit's costs increased at a higher rate or not.

RECOMMENDATIONS:

1. Duration of Agreement - It is recommended that the agreement commence on September 1, 1989 and remain in effect through August 31, 1992.
2. Sick Leave Accrual - No change recommended.
3. Salary - Twelve percent increase for all bargaining unit members of record on September 1, 1989; Five percent increase on September 1, 1990 and four percent increase on September 1, 1991.
4. Longevity - Increase annual longevity after 15th year from \$30 per year to \$50 per year.
5. Extra Teaching Assignments - Voluntary assignments be increased from \$9 per hour to \$12 per hour. Non-voluntary assignments compensated at 16.6 percent of daily salary per hour.
6. Subject Area Assignment - No change recommended.
7. Split Classes - No change recommended.
8. Six-Period Day - Union proposal number 3, which calls for six 55-minute instructional periods and a lunch period for students and five 55-minute instructional periods, a preparation period and a lunch period for teachers with a single beginning and ending time for students and teachers and uniform periods, is recommended.
9. Health Insurance - Insufficient evidence was provided to make a recommendation in a potentially high cost area. It is recommended that the contract establish a committee of three representatives of the Board and three representatives of the Union to study the entire insurance package of the District, which appears substandard. The committee should be provided with a budget to go to conferences

and meetings outside the District and to bring in people from other organizations who have successfully implemented cost containment programs and yet maintain decent programs. The committee should also consider engaging some help to begin working cooperatively together. The committee should be charged to meet at least weekly in stark contrast to the bargaining record of the parties.

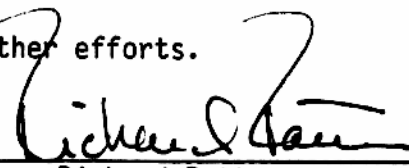
10. General: The Ecorse District faces some potentially severe problems. If the parties continue to communicate with each other at MERC hearings, through lawyer's briefs, through mediators and fact finders, they will go down together. They must begin to face problems together.

The Board's brief states that "it is perhaps regrettable but nevertheless a common fact that both businesses and communities which have experienced serious economic downturns must adjust by cost cutting . . . they must cut back on salaries . . .

This has been done, even with the recommendations contained herein. But it is a short-term solution at best. The businesses and communities which have survived and prospered are those where the employee and management pull together and don't pull the organization apart.

The most important recommendation, therefore, is that the Board and Union seek help in initiating joint efforts at addressing their mutual problems. Hopefully the experience in working on health care can become a model for other efforts.

October 4, 1989



Richard Potter
Fact Finder

**ATTACHMENT 1
ECORSE SCHOOLS FACT FINDING
EXHIBITS**

1J	1985-86 - 1987-88 Agreement
2J	1985 Fact Finding Report
3F	Selected contract provision comparison
4F	Salary changes 1987-88 to 1988-89
5F	Salary changes - Tri County - 1987-88 to 1989-90
6F	Salary changes - Tri County - 1989-90 to 1990-91
7F	Salary Ranking - Tri County - 1987-88
8F	Salary Ranking - Tri County - 1988-89
9F	Salary Ranking - Tri County - 1989-90
10F	Summary of ranking, within county, 1987-88
11F	Summary of ranking, within county, 1988-89
12F	Summary of ranking, within county, 1989-90
13F	Summary of ranking, within county, 1983-84
14F	New salaries under Federation proposals
15F	Salary differential for second MA and doctorate
16F	Estimated cost of Federation proposal
17F	CPI 82-89
18F	CPI 82-89 All urban clerical worker
19F	CPI 82-89 All urban
20F	CPI All city average
21F	CPI July '89 U.S. city average and North Central
22F	CPI explanation
23B	Financial projections
24B	Financial projections
25B	Salary projections under Federation proposal
26B	Revenue & SEV history
27B	1987, 1988 and projected 1989 tax levies under judgment
28B	Summary of high school teaching load 1982-83/1988-89
29B	Selected contract provisions River Rouge
30B	Comparison of benefits, current and proposed health care
31F	Selected summary of benefits

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- 32F Listing of Tri County District longevity
- 33F Calculation of longevity
- 34F Excerpts from Wayne County School's databook
- 35B Millage history - Ecorse School District
- 36B Millage rates for Ecorse and River Rouge
- 37B Memo to Mr. Sammons from Mr. Manning
- 38B 1988-89 and 1988-89 through 1990-91 Financial statement summaries
- 39B Financial statement for period ending 6-30-89
- 40B Financial statement for period ending 7-30-89
- 41B State School Aid Acts - State's reports
- 42B Board's "Statement of Unknown Variables"
- 43B Statement of position on proposals
- 44F Michigan Compiled School Aid Act
- 45F Continuation of Exhibit 34B
- 46F Compilation of comparative information
- 47F Gross summaries of various budgets and financial reports
- 48F Annual school district financial report for FY 1988
- 49F Ecorse School expenses
- 50F Health insurance
- 51F Cost of federation proposal
- 52F State aid for
- 53F House Bill 4336
- 54B FY 90 State Aid projection
- Relevant Exhibits submitted with Board brief:
- 55B Bargaining notes
- 56B Letter from William Bushaw to George Newman
- 57B Union proposals on six period day