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FACT FINDING REPORT OF HEARING OFFICER

IN THE IMPASSE DISPUTE BETWEEN

ANN ARBOR PUBLIC SCHOOLS

- and -

ANN ARBOR EDUCATION ASSOCIATION

Case No. D78 F-1620

Date of Hearing: November 2, 1979

Date of Report: December 6, 1979

Hearing Officer: William Haber, Ann Arbor, Michigan

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Ann Arbor Public Schools

1. Issue

The Ann Arbor Board of Education and the Ann Arbor Education Association in their last negotiations left unresolved two issues and when it appeared unlikely that they would reach an agreement through further negotiations sought the assistance of the Michigan Employment Relations Commission through mediation and finally through fact finding. The Employment Relations Commission appointed William Haber of Ann Arbor, Michigan as its Hearing Officer to conduct the fact finding hearing pursuant to the law and the Commission's regulations and issue a report with recommendations concerning the matters in disagreement.

Between the time of his appointment on August 20, 1979 and the hearing in the Ann Arbor Public Library on November 2, the complex issue of supplementary pay rates for various activities performed by teachers was resolved by the parties themselves.

The impasse issue concerns only the question as to the time when the spring vacation should be scheduled.

The Master Agreement between the Ann Arbor Board of Education and the Ann Arbor Education Association for the period 1975-1978 provides that spring vacation shall be from April 12-15 in 1975/76; April 11-15 in 1976/77; and April 10-14 in the 1977/78 school year calendar.

The parties could not agree on the timing of the spring vacation for the 1979/80 school calendar year. The Board of Education takes the position that the spring vacation should fall within the week which ends with Easter and thus includes Good Friday. The Education Association is opposed to that proposal and prefers a fixed weekly period for spring vacation without any relationship to Good Friday. This is the issue submitted to the Fact Finder.

2. Hearing and Appearances

A hearing on this issue was held in the Ann Arbor Public Library on November 2, 1979. The Board of Education was represented by Errol Goldman, Director of Employee Relations, and Dr. Lee Hanson, Associate Superintendent for Curriculum and Instruction. Mr. Goldman presented the case for the Board.

The Association was represented by Richard Taylor, AAEA President; William Browning, Chief Negotiator for the AAEA; and David R. Harrell, AAEA Executive Director, who presented the case for the

Association. The Fact Finder was provided with both a pre-hearing and post-hearing brief and several exhibits.

3. The Position of the Parties

It is the position of the Board of Education that when spring vacation does not coincide with Good Friday, there is a significant loss of instruction for that day. There is, for example, a high rate of absenteeism on Good Friday both among teachers and students. Consequently, there are serious doubts as to the amount of instruction and learning which takes place on that day. Moreover, the ability to secure substitutes decreases when the number of absentees is substantial.

The Board calls attention to its experience on Good Friday in 1978 during which it testified there was an inadequate number of teachers to supervise classes. As a result some students were placed in the auditorium with administrators instead of teachers and even one or two School Board members took charge of classrooms. In the Board's view, it is using every possible means to secure an adequate number of substitutes and it rejects the criticism of the Association concerning its energy and innovativeness in dealing with this problem.

The Board also calls attention to the fact that in comparable Washtenaw County districts spring vacation is "linked" to Good Friday. The Board also provided information concerning the spring vacation schedule in other districts, such as Flint, Lansing and

Grand Rapids. The Fact Finder's attention was called to the scheduled spring vacations in other university communities faced with multi-cultural populations. Among these communities were South Bend, Indiana; Madison, Wisconsin; Champaign, Illinois; and Columbus, Ohio.

In calling attention to the history of this issue in the Ann Arbor Public Schools, the Board indicated that there was no fixed pattern between Good Friday and the spring break. In only four of the most recent 12 years Good Friday did not fall during spring vacation. Two of these occurred in 1977 and 1978. The Board was not uninfluenced by certain court cases in Florida and elsewhere. Subsequently, however, new court decisions convinced the Board that the legality issue was not significant and that the Board should be guided by what is good for the students rather than to be unduly concerned about a possible legal challenge.

Finally, the counsel for the Board urges that the question of legality, specifically that linking Good Friday to spring vacation may be illegal, should not be seriously considered. He submitted for the Fact Finder's study several documents which emphasize that a negotiated arrangement which links Good Friday with spring vacation has only an indirect and incidental effect on religious institutions and practice; that the purpose of such a linking is "clearly secular;" that it neither advances nor inhibits

religious exercise; and that it is not necessarily unlawful. In any event, this is a matter for the courts and not for the Fact Finder.

It is the position of the Ann Arbor Education Association, as explained at the hearing and summarized in its post-hearing brief, that a fixed period for spring vacation, such as the second full week period in April, would make it possible for families in Ann Arbor to do advance planning concerning their spring vacation and would be more convenient than a vacation schedule linked to Good Friday which does not fall during the same week each year. The Association refers to complaints from parents who wish to make their vacation plans as early as the previous September. It states that not everyone possesses a perpetual calendar which would tell them exactly when Good Friday falls next year and in future years.

In addition, the Association calls attention to the fact that the second week in April provides a natural break between marking periods and thereby facilitates both the teachers' work and the students' educational progress.

Thirdly, scheduling the spring vacation in conjunction with a particular religious holiday favors one religious group over others and may well represent a violation of the separation of

church and state requirment." Such a scheduling may create a legal liability for the Association as well as the School Board and may result in law suits which ought to be avoided.

Moreover, the Association disputes the Board's view concerning the problem of securing enough substitutes to deal with absenteeism on Good Friday and claims that the Board has not vigorously pursued such a search nor sought innovative procedures nor the assistance of the Association. It also disputes the Board's claim that there is a loss of instruction due to student and teacher absenteeism on Good Friday. This claim has not been supported by proof and it is improper to assume that instruction must always be in a 30 student classroom and originate from a teacher. It refers to alternative ways of teaching which should be explored.

Finally, the Association is not impressed with the Board's citation of other districts in this area which schedule spring vacation to coincide with Good Friday. These communities, the Association observes, do not possess the multi-cultural atmosphere of Ann Arbor and may be insensitive to religious minorities and ignorant of the constitutional requirements.

4. Discussion and Recommendation

In recapitulating the position of the parties, it is clear to the Hearing Officer that the teachers, represented by the Association, are of the view that a fixed period, the second week

of April, is an appropriate time for the spring break. They state that it is a logical time from the point of view of grading. The school year is broken into four 9-week grading periods in the secondary level and the third 9-week segment ends just prior to the second week in April.

In addition, having a fixed period unrelated to a holiday whose calendar date fluctuates within a 28 day period facilitates long range planning for family vacations or other purposes.

Finally, avoiding a linkage between Good Friday and spring vacation also avoids any discrimination to religious minorities and the constitutional church - state issue.

The School Board on the other hand emphasizes that its primary consideration was educational instruction of the students in the school system. On the basis of its most recent experience it concluded that an educational deficit existed during the week on which Good Friday fell and school was supposed to be in session. It, therefore, proposed that the spring vacation should include the week of Good Friday, thus removing the problem of absenteeism among students and teachers on that day, eliminating the quest for substitutes and the resulting administration problems in the classroom or the school assembly hall when an adequate number of teachers is not available. The School Board dismissed the issue of legality, observing that the constitutional issue is one for

the courts to decide and should not be a part of the Fact Finding procedure.

The Hearing Officer has reflected most painstakingly upon the rather simple but delicate issue in this impasse. It is not a complex problem. After reading the lengthy letters submitted by attorneys representing both the Association and the Board of Education, the Hearing Officer has concluded that the so-called constitutional issue should be set aside. To begin with, it is highly legalistic and involves the complex and delicate question of the relation of church and state. It is a matter which properly belongs in the courts. And while the Hearing Officer has an opinion that most courts would hold that the Board of Education approach "reflects a clearly secular purpose" and is not designed to involve "government entanglement with religion," that decision should not be made by him.

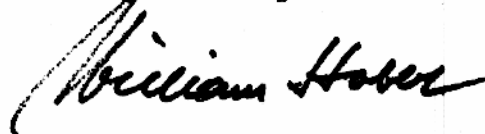
Consequently, the Hearing Officer eliminates that issue from his consideration. He is not unaware of the fact that a minimal degree of differentiation exists when a teacher who is not an adherent of the majority religion wishes to be absent on one of the minority holidays. He must lose a so-called sick day to compensate for his absence. Such compensation is not required for the teachers who wish to participate in the Good Friday services which take place when Good Friday is part of the spring vacation.

The central issue, it seems to the Hearing Officer, is whether the claim of the Board of Education that the educational advantages from the viewpoint of instruction should be set aside because of the claimed inconvenience to the teachers, resulting from the fact that Good Friday does not occur during the same week each year.

The Hearing Officer has concluded that the larger consideration, that of education and instruction, should take precedence over the questionable inconvenience which teachers may suffer. Professional people, represented by the Education Association, should have no difficulty determining in advance when Good Friday falls each year and make their spring vacation plans accordingly. The calendar is no great mystery and the date of the spring vacation which includes Good Friday is no more difficult to identify in September than in March or April.

It is the Fact Finder's recommendation that the Board of Education proposal for a spring vacation during the week in which Good Friday occurs should be put into effect.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William Haber".

William Haber