4/5/96
FF C.I.

STATE OF MICHIGAN
DEPARTMENT OF LABOR
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the
Fact Finding between:

PONTIAC SCHOOLS,

and

UNITED SKILLED MAINTENANCE TRADES EMPLOYEES, — MERC No. D93 F-0947

PONTIAC PARAPROFESSIONAL INSTRUCTION ASSOCIATION, — MERC No. D93 F-0945
and

FOREMEN'S ASSOCIATION — MERC No. D93 F-0946

Pontiac School District

REPORT OF FINDING OF FACTS AND RECOMMENDATIONS

APPEARANCES:

FOR THE ASSOCIATIONS:

Lee Longfield, Executive Director
Sarah Walker, President, Para-professional Instructors
Kim Pino, Uniserv Associate
Steve Jones, Foremens' Assoc.
Robert Jenks, Skilled Trades

FOR PONTIAC SCHOOLS:

Harold Curry, Attorney
Tom Anderson, Asst. Superintendent
Robert Wolven, Supervisor of Operations
Tommaleta Hughes, Dir. of Personnel

This is a fact finding involving an impasse between the Board of Education of the School District of the City of Pontiac and the United Skilled Maintenance Trades Employees, the Pontiac Paraprofessional Instruction Association, and the Foremen's Association, three separate unions representing three separate bargaining units.

FF: George T. Roumell, Jr.

The parties have agreed that each unit has had and continues to have a separate contract. This Fact Finding Report will be issued on this assumption.

Organization of Fact Finding Report

Recognizing that there are three bargaining units, the Report is organized to address the issues as to each unit. Since the Foremen's Association and the United Skilled Maintenance Trades Employees in many cases have similar issues, discussion of such common issues shall be combined. Once an issue has been discussed, a recommendation as to said issue will be set forth. The text will indicate which contract is involved. After discussing the Foremen's Association and the United Skilled Maintenance Trades Employees' issues and making recommendations thereto, the Fact Finder will end this Report addressing the Pontiac Paraprofessional Instruction Association. The Report will begin with a section on "Background" setting forth the genesis of this Report and the criteria this Fact Finder has utilized in preparing his Report of Finding of Facts and Recommendations, with emphasis as to the effect of the bargaining history and financial ability on the Report.

Background

Following the appointment of this Fact Finder by the Michigan Employment Relations Commission, this Fact Finder met a number of times with the parties. There were a number of issues. The positions have been polarized. By the time the matter had reached fact finding, the parties had the opportunity of meeting with one of the most experienced mediators in the State's service, a mediator who has a reputation of

outstanding success in resolving labor disputes. Despite the valiant efforts of this mediator, the dispute between the parties was not resolved. Thus, fact finding.

The Fact Finder engaged in mediation so as to eliminate some of the issues, and to bring the parties into focus as to their disputes. As a result, certain issues were resolved. This Report is based upon the remaining issues. The resolved issues should be part of the parties' Agreement, such as the agreement as to site based decisionmaking that were initially issues between the parties as to all three contracts.

The Criteria

Fact finders use certain criteria upon which to make recommendations, criteria that is gleaned from the private sector, as applied to public sector bargaining. These criteria include:

(1) The employer's ability to pay.

(2) Comparables with other employees of the employer, as well as similarly situated employees among other public employers and private employers in the area.

(3) The bargaining history. It must be recognized that collective bargaining agreements are the product of collective bargaining and that fact finding in Michigan can be the end result of bargaining. Bargaining history, including the current bargaining history as well as previous bargaining history, and the relationship of that bargaining history to outside comparables, can be a guide in predicting what the parties may have agreed to without fact finding.

(4) The strike criteria. Though strikes by public employees are prohibited, there sometimes are public employee strikes but, more importantly, there are private sector

strikes. The result of these strikes sometimes gives an indication of the settlement factor for an agreement under consideration.

(5) The art of the possible. At some point, a collective bargaining agreement must be reached. The ability to reach an agreement depends on the art of the possible, i.e., what is possible under the circumstances considering the give and take of collective bargaining. It is these criteria that will guide this fact finder in making his recommendation.

Financial Ability and Bargaining History

By this section, the Fact Finder is highlighting two criteria, as they do represent the driving force in the situation that the Fact Finder found when called upon to investigate the facts as to the Pontiac School District. When combined with the other criteria, as applicable, it would seem that these criteria give guidance toward resolving the disputes.

As to finances, with the exception of 1985 and 1991, the District has had a negative fund balance 14 times in the last 15 years. In 1985 and 1991, there were no deficits because of the sale of deficit elimination bonds. However, by careful management, the District in 1995 is experiencing a fund balance. The Fact Finder recognizes that some of the deficits in given years may not have existed but for the necessity to carry over previous deficits. The fact remains, however, it was only until 1995 that the District has begun experiencing positive fund balances. There is also a change in the method of school financing in Michigan as a result of Proposal A, passed in 1994. The District likewise has experienced some drop in student population. This

means that the District must operate with financial constraint, a point that has not been lost on this Fact Finder, and has been factored into the recommendations here.

As to bargaining history, there are two points to be made. As of December 1995, the District had settled with six unions covering periods that are in dispute here. These unions were the Pontiac Association of School Administration, Pontiac Education Association, Pontiac Educational Secretaries, Administrative Assistants, Engineers and AFSCME Local 719. The bargaining history does indicate a range of economic settlements that cannot be ignored. The settlements were:

1. Pontiac Association of School Administration
   - 1.1 Settlement 1993-94 = 0% 94-95 = 0%
     95-96 = 2% 96-97 =4%
   - 1.2 Changed insurance, from Board's self funded to equivalent to MESSA Super Care "I" with a $2.00 prescription co-pay.
   - 1.3 Reduced administrative staff positions
2. Pontiac Education Association (Teachers)
   - 2.1 Settlement 1994-95 = 0% 1995-95 = 2% 1996-97 = 3%
   - 2.2 Restructed health insurance from MESSA Super Care II to MESSA Super Care I from a $.50 prescription co-pay to a $2.00 prescription co-pay.
3. Pontiac Educational Secretaries (Secretarial Association)
   - 3.1 Settlement 1993-94 = 0% 1994-95 = 3% 1995-96 = 2% 1996-97 = 3%
     Bonus equal to two days not on the wage schedule one time only.
   - 3.2 Restructed the health insurance from MESSA Pack Super Care II with a $.50 co-pay prescription to MESSA Pak Super Care I with a $2.00 prescription rider.
   - 3.3 Cash bonus not on the wage schedule equal to two days.
4. Administrative Assistants (Executive Secretaries)
   - 4.1 Settlement 1993-94 = 0% 1994-95 = 3% 1995-96 = 2% 1996-97 = 3%
     Cash bonus not on the wage schedule equal to two days.
   - 4.2 Changed health insurance from the Board's self funded Blue Cross Blue Shield

to an insurance equal to MESSA Pak Super Care I with the $2.00 co-pay prescription rider.

5. Engineers
   5.1 Settlement 1993-94 = 0% 1994-95 = 2% 1995-96 = 3%
   Two additional days added to their sick bank for the 1994-95 school year only.

   5.2 Changed insurance from the Board's self funded Blue Cross/Blue Shield to insurance equal to MESSA Super Care I with a $2.00 co-pay prescription rider.

6. AFSCME 719
   6.1 Settlement 1992-93 = 0% 1993-94 = 3% 1994-95 = 1.75% *(94-95 Bonus concept not on the wage schedule)*

What is obvious from these settlements is the range of settlements which reflect the District's concern over maintaining its financial health. It includes a restructuring of health insurance as part of the overall financial strategy. These settlements were not lost on the Fact Finder and were factors he considered in preparing this Report and the recommendations contained therein.

Yet, despite six unions settling, the three here, the Foremen, United Skilled Trades, and the Pontiac Paraprofessionals, had concerns in what each believed were special circumstances that merited further consideration by the Board. These three Unions suggested that some of the rationale for the settlements as to the other unions, particularly as to the Administrators, would not necessarily apply to their bargaining unit.

The other aspect of bargaining history is that the Board, with modest economic proposals, was attempting to make changes in the contract -- changes in language that had existed for several years. This does not mean that changes cannot be negotiated and considered. But in the scheme of things, it is essential that both parties who have proposed changes in contract language, in the bargaining climate that existed, could

not expect in most cases to obtain these changes. This point will be emphasized several times as each issue is discussed.

UNITED SKILL MAINTENANCE TRADES EMPLOYEES and FOREMEN'S ASSOCIATION

The Issues

As to the Foremen and United Skill Maintenance Trades Employees, the issues that were eventually presented to the Fact Finder, after some issues were eliminated, were as follows:

UNITED SKILLED MAINTENANCE TRADES EMPLOYEES

1. Duration
2. Wages and other economic improvements
3. Retroactivity
4. Four day work week students not in session
5. Article 4, Item 7 Association Security
6. Article 5, Item 7 Association release time
   Article 5, Item 8 Release time for negotiations
7. ~~Article 7~~
8. Article 8, Section F, Item 8 Evaluation-right to grieve
9. Article 8, Section I
   Item 2 no layoff current language [pg. 8 current contract]
   Item 4 layoff one week DELETE
10. Article 9 Grievance Procedure
    Item 10 Grievance after Expiration
    Item 11 Employee release time to process
11. Article 10, Section A
    Item 1.2 step-children
    Item 4 benefits to LTD

FOREMAN ASSOCIATION

1. Duration
2. Wages and other economic improvements
3. Retroactivity
4. Job Descriptions
5. Division titles [change to reflect current areas of responsibility]
6. Assistant Foreman to Foreman (Falkner)
7. Separate checks
8. One additional vacation day
9. Article 4, Item 7 Association Security
10. Article 5, Item 7 Association release time
    Article 5, Item 8 Release time for negotiations
11. Article 7, Section B rest periods current language
12. Article 8, Section F, Item 8 Evaluation - right to grieve
13. Article 8, Section I
    Item 2 no layoff current language [pg. 8 current contract]
    Item 4 layoff one week DELETE
14. Article 9 Grievance Procedure

12. Article 10, Section B, Item 5 number of NYB days (Association)
13.
14. Leave of absence

Item 10 Grievance after Expiration
Item 11 Employee release time to process
15. Article 10, Section A
Item 1.2 step-children
Item 4 benefits to LTD
16. Article 10, Section B, Item 5 number of NYB days
17.
18. Requirement to evaluate

In comparing the issues as between the United Skilled and Foremen, there are common issues. These common issues will be addressed together and the Recommendations will be applied to both.

The Common Issues

Association Security

As to Association security, the issues involve the indemnification provisions and the defense by the Association of the Board in the event there is a lawsuit concerning the Association security provisions. Applying the comparables and the collective bargaining criteria, the Fact Finder notes that there is certain Association language adopted in the collective bargaining agreement between the District and the Pontiac Education Association, representing the teachers. That language was acceptable to the District, and there is no reason why this language should not be carried over into the United Skilled Maintenance Trades and Foremen's Association's agreement. For this reason, the Fact Finder will so recommend.

Release Time

Both the United Skilled Maintenance Trades and Foremen's Associations have asked for release time for the Associations to engage in negotiations. In Article 4, Items 3 and 4 of the United Skilled Maintenance Trades agreement, there are provisions providing for ten days of release time to the President "for the purpose of conducting Union business." Likewise, in Item 4, there is a provision that the Union shall be granted ten days, or a total of 80 hours, "for the purpose of negotiations." Similar language can be found in the Foremen's agreement.

Applying the bargaining criteria, it would seem that, over the years, the parties have been satisfied to reach this plateau. The "art of the possible" would suggest that in bargaining, the parties would not change these provisions, which seem to be adequate. For this reason, the Fact Finder recommends no change in the current language in either the United Skills or Foremen Agreement.

Grievance Procedure

Article 9 of the respective United Skilled and Foremen's agreements address grievances. The parties have reached certain agreements concerning same but are in dispute as to two items proposed by the Association, namely, Items 10 and 11. Applying the "art of the possible", the Fact Finder would recommend that Item 11 read, "An employee who must be involved in the grievance procedure during the work day shall be excused with pay for that purpose, recognizing, however, that the grievance may be processed outside of the employee's work day without pay." This accommodates the concerns of both parties, recognizing that in order for the employee

to be paid, the words "must be involved" have been placed in the agreement. This phrase means that involvement cannot be whimsical. Likewise, there is the recognition that a grievance may be processed outside of the work day.

There is also a dispute as to Item 10 concerning the processing of a grievance after the expiration of the agreement. There is judicial opinion on this subject. Recognizing that sometimes it takes some period, particularly among public employers, to negotiate successor contracts, the Fact Finder, under the "art of the possible," would recommend the following language: "Notwithstanding the expiration of this agreement, any claim or grievance arising thereunder may be processed, up to a period of six months after the expiration of the agreement, or until a successor agreement is concluded, whichever occurs first, through the grievance procedure until resolution." The rationale for this recommendation is a realistic acknowledgement that it takes time to negotiate successor agreements. A limited six month period is an attempt to prevent delays in negotiating a successor agreement.

In making this Recommendation, the Fact Finder recognizes that he has put this recommendation previously in writing to the parties, though rejected by the Board. Yet, the Fact Finder continues to make this recommendation. There is no reason why the Board should not accept same. Presumably, the Board will carefully administer the Agreement and avoid grievances from reaching arbitration. It is one of the items that has kept the parties from reaching agreement. It encourages quick resolution to contract disputes. On the other hand, it gives some recognition as to the delay in reaching successor contracts in a situation where the employees do not have the

statutory right to strike.

Grieving Evaluation

The parties are in dispute as to whether there is the right to grieve evaluations under both the Foremen and United Skilled contracts. The parties' respective positions on the point are set forth in their statements made to the Fact Finder. The Association writes:

> The Association currently has the right to grieve evaluations, and the employer proposes to eliminate that right.
>
> The Association retains the right to grieve through arbitration failures of the employer to follow the negotiated evaluation procedure. Employees must also be protected from evaluations that include reference to facts in error. Within the past year the Association has had the experience of preparing for arbitration where disciplinary action was taken against an employee based upon allegations simply not factually accurate. Despite hearings and despite written notices, the employer did not acknowledge the error in fact for ten months, and then, the Association believes, did so only because a third party was to hear the case the next morning. The Association believes that a factual error contained in an employee's written performance evaluation could not be corrected without access to the arbitration procedure.

The Board's advocate on the point writes in part:

> Employees have never been granted the right to grieve the judgment of those making evaluations. This is because the evaluation process has built in procedures that protect the rights of those being evaluated. Additionally, the same grievance procedure provision contained in the parties' agreement is available to employees for just cause and due process violations. Moreover, any member of the Foremen Association or USMTE may file a complaint under

> federal or state law if he or she thinks that his or her employment right has been violated. The Union's request here is uncommon and unreasonable.

The parties are in dispute as to what the current contract provides. The Foremen's contract, under Article 8, "Grievance Procedure," provides in part: "A foreman shall have the right to appeal a decision or situation which it believes to be a violation, misinterpretation or inequitable application of any provision of the Agreement...." There is similar language under "definitions" in the grievance procedure set forth in Article 8 of the United Skilled Trades' contract. In the view of the Fact Finder, the Advocate for the Associations is correct. This language can be interpreted as including the right to grieve evaluations. Thus, if the Fact Finder is applying the bargaining history criteria, such a provision would not have been changed in bargaining. It would not prevent a grievance challenging an evaluation from being processed.

Furthermore, the Fact Finder can take notice that frequently in public employment contracts, and more specifically in public school contracts, usually evaluations can be grieved and be subjected to arbitration. Likewise, although parties rarely proceed to arbitration over evaluations, the whole concept of arbitration is to provide a vehicle, if necessary, to resolve disputes. And, certainly, there can be disputes over evaluations. It is far too late, when hearing a just cause discipline action, to challenge an evaluation that may have been given several years previously. There is just no reason to change the contract. And if there is a dispute over what the contract

provides, then the contract should be clarified. It is doubtful that evaluations will get to arbitration, but the vehicle is there. The Fact Finder therefore recommends that there be a right to challenge evaluations in the grievance procedure to arbitration.

Stepchildren

In Article 10, Section A, there is a proposal that both the United Skilled Trades and Foremen's agreements define the term "children," as used in that Section, to include stepchildren. The District has argued that, as a practice, it makes no such distinction and does include stepchildren. The Associations are concerned that this practice be memorialized in the Agreements. This is an "art of the possible" situation. To families, stepchildren can be as dear as natural children and there is just no reason not to clarify the language by including stepchildren. For this reason, the Fact Finder will recommend that the term "stepchildren" be used in the respective Articles 10, Sections A.

LTD Benefits and Approved Leave Days (NYB Days)

As to both of these items, the Fact Finder believes that in applying the bargaining history and the art of the possible, the language that is contained as to the respective items in both Agreements shall remain as they were under the expiring contracts. If there are any differences between the two Agreements, then those differences should continue. These are items that would not have held up a contract. These are items that have been handled through previous contracts and should remain as they were in previous contract in the respective forthcoming Agreements.

Leave of Absence

In both the Foremen's and United Skilled contracts, there is no guarantee that employees who return from an unpaid leave of absence will return to the same position. The argument made for a proposal for each contract would be the employee be returned to the same position "after an unpaid leave of no more than 12 months duration," was set forth in the preliminary statement presented on behalf of the two Unions, which reads:

> These are employees in positions for which the skills, qualifications, and licenses are interchangeable with no other employee or with five or fewer employees, so reference to positions "commensurate with training or experience as vacancies are identified" either requires that the original position be guaranteed upon return or, as a practical matter, the employee cannot return to work.
>
> Employees in both U.S.M.T.E. and Foremen have experienced unpaid leaves from work due to personal illness or disability. The employer did not replace the employees during the leave, and the employees were returned to their same position.

In addition, both the United Skilled and Foremen's Agreement provides that to qualify for an unpaid leave of absence (without pay), an employee "must have been employed by the Board at least two (2) years." In the initial Preliminary Fact Finding Report, the Fact Finder recommended that holding a position open for six months would be reasonable, and that being eligible to take an unpaid leave of absence after one year would be reasonable.

After further fact finding and consideration, the Fact Finder believes that the two

year provision to be eligible for leaves of absence has been in the contracts for a number of years. Based upon this bargaining history, it is doubtful whether the parties would have modified this position through bargaining. The District maintains that in order for it to have an obligation to an employee, that employee must have had some longevity with the District. This would seem to be an argument that would prevail at the bargaining table and would not hold up a contract. For this reason, the Fact Finder, on further consideration, would recommend that there be no change in the present contract on this point.

As to holding a position open, again the question is the bargaining history of the present provisions. Contrary to this Fact Finder's preliminary observations as to a six month provision, it would seem, under the art of the possible criteria, that a three month provision would give further assurances to the employees of what has been a practice, and yet allow the Board to manage its affairs. This may be the result of bargaining applying the art of the possible criteria. Therefore, the recommendation of the Fact Finder is that the return provisions be modified to guarantee a return for three months. This is reasonable. It is consistent with applicable statutes, and is a balance under the art of the possible criteria between the respective viewpoints of the parties on this issue.

Four Day Work Week

Though listed on the United Skilled Maintenance Trades Employees as an issue, *i.e.,* four day work week, the Fact Finder believes, although he is not clear, that this would also apply to Foremen. What is proposed is that the contract provides for a four

day work week when students are not in session. This has been done on an experimental basis and has proved to be successful. However, though the Fact Finder believed initially that there was merit to include this in the contract, on reflection, recognizing that both Agreements provide for Board rights, it may be that there may be a time that the Board may not find the four day work week in a given situation, consistent with its operational needs. Therefore, in bargaining and considering the overall situation and the art of the possible, it is doubtful whether the Board would have agreed to place a four day work week in the contract. The Fact Finder acknowledges that in his preliminary report, aiming to encourage parties to negotiate, he opted to recommend that the four day work week be included in the agreements. In doing so, he was hopeful that the parties could resolve the four day work week. They have not, despite mediation efforts. Thus, the recommendation is to leave the status quo.

Separate Issues As Between Foremen and United Skilled Trades

There are several issues that apply only to the Foremen. The Fact Finder now addresses these issues.

Foremen

A. Job Descriptions and Division Titles.

There has been a proposal to strike No. 10 and No. 14 from the job descriptions dated December 13, 1993. Likewise, there has been a proposal as to Division Titles in the Foremen's agreement which seems reasonable, as reflecting current areas of responsibility. There is no reason why the following proposals should not be followed:

"Change carpentry/roofer/masonry to carpentry. Change paint to roofer/masonry/paint and glaze. Change auto mechanic to vehicle maintenance."

The District has not been able to explain any reason not to make these changes. This is the type of item that, in bargaining, would have been agreed to if the parties were faced with a strike deadline and wished to avoid a disruption caused by a strike. It is based upon this strike criteria that the Fact Finder will recommend that the proposal proffered by the Foremen's Association on job descriptions and division titles be accepted.

B. **Separate Checks**

The foremen have proposed that all compensation in addition to wages be paid in separate checks. For the same reasons suggested under the title "Job Descriptions and Division Titles," this Fact Finder recommends that this proposal not be adopted. It would not have been agreed to, even if there was a strike pending, at the bargaining table. In this age of efficiency, including consolidation of payroll functions, there is absolutely no reason to recommend this proposal. There is no reason why the District would ever agree to this proposal.

C. **Additional Vacation Time.**

The Foremen's Association notes that the United Skilled contract contains one more vacation day than in the Foremen's contract. This obviously is of concern to the Foremen. But, again applying the bargaining history criteria, this is a product of bargaining over the years, and for this reason the Fact Finder will not recommend same.

D. Promotion to Foreman (Falkner)

There is an employee by the name of Falkner who is currently an Assistant Foreman. The Foreman's Association seeks to have Mr. Falkner promoted to foreman. On current rates of pay, this would mean an increase from $17.83 per hour to $18.57 per hour, or an annual difference of $1,539.20. At the same time, if such an approach was followed, the Board would eliminate a $750.00 per year payment in lieu of vehicle use. Thus, the net financial effect of this change is approximately an increase of $750.00.

The Board disputes whether a foreman is needed. The fact is supervisors have been eliminated in Mr. Falkner's department and, presumably, he is assuming their duties. With such a change in status, the District would be able to give more duties and responsibilities to Mr. Falkner. This approach is within the art of the possible. For this reason, the Fact Finder will recommend that Mr. Falkner be so promoted effective July 1, 1996. The reason why this promotion is prospective rather than retroactive is because the District is entitled to make adjustments in Mr. Falkner's work assignments to reflect his status. This cannot be done retroactively.

Foremen Evaluating

The Advocate for the District, on the issue of foremen preparing evaluations, writes:

> The District maintains that it is essential that the foremen be included in evaluating the Trade Skill Employees. By virtue of their direct observation and on site closeness to the Trade Skilled Employees performance, the foremen are well positioned to provide the District with the knowledge and input it needs to evaluate the output and quality of services coming from the position that the Skilled

Employees occupy.

Except for a claim that there were in the past supervisors who did the evaluations, the arguments offered by the Foremen's Association in opposition to the District's proposal concerning evaluation is not persuasive. The art of the possible would suggest that, all other things being equal, the Association would not prevent a contract from being executed over this issue. After all, the Foremen are supervisors. United Skilled Trades Employees work for foremen. There is no reason why the foremen could not evaluate. For these reasons, the Fact Finder is recommending that foremen do evaluations and the contract should so provide.

LAYOFF LANGUAGE AND ECONOMICS

After going through the above items, the Fact Finder concluded that there were two major issues separating the parties. The first is the matter of layoff language. The issue is set forth below:

No layoff

The language in the current contract (Article VII, Section H, Item 4) reads:

> During the term of this Agreement no employee who was hired before July 1, 1988, shall be laid off or reduced in classification unless there is a closing of all schools because of financial reasons.

The employer proposes to eliminate this language.

Temporary layoffs

The language in the current contract (Article VII, Section H, Item 3) reads:

> In the event of temporary layoffs due to acts or occurrences not initiated or controlled by the Board, the employees immediately affected may be laid off without notice and regard for seniority for a period not to exceed one (1) week. Temporary layoffs which exceed the one (2) week period shall be regulated by seniority application.

The Association proposes to eliminate this language.

The District proposed the following no layoff language to the Fact Finder:

> The Board proposes that the current language, cited above, in Article VI, Section D, Item 2, of the last agreement (1991-1993) between the Foremen Association and the Pontiac School District be deleted and be replaced in the successor Agreement between the parties with the following new language, referenced below:
>
> > During the term of this Agreement, the Board shall lay off employees when there is a reduction in force. A reduction in force is when the Board deems it necessary to reduce the number of employees in a given class, department, building or program in the school district.

In support of this language, the Board's Advocate wrote:

> While the no layoff provision has appeared in many agreements between the parties, it is an example of items that were allowed to stay too long all for the wrong reasons.
>
> First of all its inclusion is inconsistent with the state law MCLA 423.215(2) which states, notwithstanding the collective bargaining process:

"A public school employee (the Pontiac School District) has the responsibility, authority and right to manage and direct on behalf of the public operations and activities of public schools under its control."

Plain and simple, if a school district cannot change or reduce the size of its work units or staff, then it cannot control its costs, take advantage of new equipment and technology for reasons of efficiency and production, maintaining this provision, as the Union proposes, only perpetuates a problem that causes the District to neglect its duty to the public under the law.

There are other reasons why the District cannot and will not agree to the conclusion of a no layoff provision and guaranteed right of return to position provision in a Collective Bargaining Agreement.

Since the enactment of recent legislation preventing school districts from passing millages to finance union contacts, districts must now rely on student enrollment as a yardstick by which to measure revenues and levels of funding as indicated by the included enrollment schedule for Pontiac Schools, its student enrollment has decreased significant in the last ten (10) years. This loss of students which translates into loss of revenues is something that it likely will not recover any time soon.

The response of the Associations was set forth in the following statement by their Advocate:

I am in receipt of your proposals regarding Article 8, Section I, Item 2 and Article 8, Section I, Item 4 of the Foreman contract and regarding Article VII, Section H, Items 3 and 4 of the United Skilled Maintenance Trades Employees contract.

We view your proposals to be regressive from your prior table position and evidence of the employer's continued bad faith conduct in this round of collective negotiations.

> Your proposal is purposefully worded to permit the arbitrary and capricious layoff of unit members irrespective of the district's financial condition and without regard to a legitimate financial need for the layoffs.
>
> The Association has no change in its table position with respect to the above-referenced sections of the master agreement.
>
> We continue to be willing to consider, as part of a total settlement, an agreement to continue the current language but to cover only current members of the bargaining unit.

The second major issue separating the parties is the wage scale.

The Fact Finder has grouped both of these issues together for the art of the possible must prevail. Both the layoff language and economics must be treated in tandem in order to gain, from the Board's perspective, an economic package that is consistent with other settlements so as to maintain its financial integrity. The language as to no layoff should remain if the Board expects to obtain the economic package it is seeking. The Board cannot have it both ways. Likewise, the Association should recognize that there cannot be a change in the temporary layoff language for the art of the possible, coupled with the bargaining history of the parties, would not produce a change in the temporary layoff language in the present bargaining atmosphere.

Both the permanent and temporary language has been in the parties' contracts since 1980. The provision also provides that the no layoff language is limited to employees who were employed prior to 1988, which gives some flexibility to the District. For some reason, in 1980, and continuing for a number of years when the District had deficit fund balances, the District was satisfied to keep this language in the contract.

With the District offering a modest economic package, the District is unable to offer the necessary financial incentive to change the longstanding no layoff provisions. Thus, if a modest economic package is to be adopted, the bargaining history suggests that in return there would be no change in the layoff language.

To put it more bluntly, apply the strike criteria. Recently, General Motors Corporation experienced with the UAW a strike in Dayton, Ohio that had substantial consequences to the parties. Yet, the parties were able to work out an agreement. Here, if there had been a strike, the agreement would be that, in return for a modest economic package, the parties would agree to carry over the layoff language from the contract that expired in 1993.

The recommendation here is that the economic package should be modest and extend through the 1997-98 school year. By extending the economics through the 1997-98 school year, the District is obtaining an economic pattern for an additional year that it has not yet obtained from other bargaining units. The recommendation follows a pattern that was established with the Pontiac Educational Secretaries and the Administrative Assistants, namely, a bonus in the first year of the contract, not added to the base, and increasing the bonus from two days to three days. This bonus is in recognition of the Association's aid in setting the 2% pattern for the 1997-1998 year. In providing a 2% increase in 1997-98, the District has set the pattern for 1997-98 that will be helpful to the District. In return, the United Skilled and Foremen continue the no layoff language and receive a bonus. This is the art of the possible, representing the give and take of bargaining. If the District wants the no layoff language, changing a 13

year pattern of bargaining, then the District has to come up with essentially more monies which it is not prepared to do. It is just that simple. Both the District and the Associations are obtaining a fair deal if these recommendations are followed. But the deal cannot be taken in pieces. The recommendations represent an overall settlement. And that is the intent -- explicitly and implicitly -- of this Report.

There comes a time in negotiations, as noted in the Dayton General Motors strike, where parties reach settlement. Now is the time. The recommendations herein are the basis for settlement. The wage recommendation is:

Foremen and USMTE

93-94	94-95	95-96	96-97	97-98
0% (cash bonus equivalent to 3 days, not added to base)	3%	2%	3%	2%

The cash bonus would not be added to the base, but would be just that -- a cash bonus. The recommendation follows the pattern, as indicated, of the Secretaries and the Executive Secretaries, only there is an increased bonus.

The parties must recognize that this Report is like a jigsaw puzzle. All parts must fit together in order to complete the puzzle. The Board has maintained its pattern of settlements in these Recommendations. The Associations have maintained the layoff language and other language that has been part of the Collective Bargaining Agreements for some time.

The Fact Finder, therefore, recommends that the layoff language continue as in

the just expired contracts, and that the wages be as set forth above.

Retroactivity and Duration

The Agreements shall be retroactive to July 1, 1993 and shall apply through June 30, 1998.

RECOMMENDATIONS

It is hereby recommended that the recommendations set forth in the body of this Report be adopted by the parties.

GEORGE T. ROUMELL, JR.
Fact Finder

April 5, 1996

PONTIAC PARAPROFESSIONAL INSTRUCTORS ASSOCIATION

The issues involving the Pontiac Paraprofessionals are as follows:

1. Wages
2. Retroactivity
3. Longevity
4. Health Insurance
5. Health and Safety
6. Emergency School Closings
7. Fringe Benefits
    - Life Insurance
    - Long Term Disability Insurance
    - Holidays
    - Vacation
    - Dental Insurance
    - Vision Insurance
8. Approved Leave Days
9. Duration

As the Fact Finder viewed the situation, with the exception of three issues, Health and Safety, Emergency School Closings, and Approved Leave Days, the issues involving the Pontiac Paraprofessionals all impact on the economic issues that have kept the parties from resolving their collective bargaining contract dispute. The Fact Finder will address first the Approved Leave Days, Emergency School Closings, and Health and Safety issues, and then proceed with the remaining issues under the general topic of Economic Issues.

Approved Leave Days

The Association wishes changes as to approved leave days. But, again, this is a matter of the bargaining history. The bargaining history leads to the conclusion that there be no changes over the language as to approved leave days of the 1992-1994 contract, and the Fact Finder so recommends.

Emergency School Closings

The emergency school closings issue addresses the closing of schools in inclement weather. The 1992-1994 contract in Article 14, Section H, provided:

> Effective July 1, 1986, when schools are closed due to inclement weather or emergency on instructional days, employees shall not work and shall not be compensated. Days of instruction missed because of inclement weather shall be rescheduled and employees shall be scheduled to work the make-up days at their regular daily rate of compensation.

For the last three years, the Pontiac School District has experienced the following closings as a result of inclement weather:

1991/92 School Year (2)
January 14, 1992
January 15, 1992

1993-94 School Year (2)
January 19, 1994
January 20, 1994

1994-95 School Year (2)
February 27, 1995
March 7, 1995

In a statement prepared for the fact finding by the Association, the following as to "Emergency School Closings/Inclement Weather" was noted:

> Effective July 1, 1986 the parties negotiated language which permitted the employer to reschedule days of instruction missed because of inclement weather or other emergency school closing. Employees were not required to report and would not be paid. Days could be rescheduled and the employees would work and receive their regular daily compensation.
>
> Since 1986 schools have been closed because of inclement weather.
>
> Instruction for SMI and SXI students has not been rescheduled.
>
> No employee in this unit has lost compensation.
>
> There has been no "at work" requirement either before or after the day of school closing to receive compensation.
>
> The Association proposes to incorporate the practice into the successor Master Agreement.

There are memoranda from the School District dated January 16, 1992 and

January 24, 1994 which in 1994 read in part:

> Food Service Employees, Media Aides, SEIU Employees who work 20 or more hours, and Instructional Aides are to be reported as having worked a normal work day provided they worked on Tuesday, January 18, 1994, and Friday, January 21, 1994, unless excused by approved contractual guidelines. If you have individual questions, contact the appropriate Personnel Director.
>
> Administrators, teachers, and secretaries are to be reported as having worked a normal day January 19 and 20, 1994, provided they were at work on January 18, 1994, and January 21, 1994, unless excused by approved contractual guidelines. Secretaries who worked should be scheduled for an equal amount of time off with the immediate supervisor's approval. That time off must not interfere with the efficient operation of the work unit.

The 1994 memorandum is identical to the 1992 memorandum, except for the dates in the quoted portions. There is a March 8, 1995 memorandum which reads:

> Food Service Employees, Media Aides, SEIU Employees who work 20 or more hours, and Instructional Aides are to be reported as having worked a normal work day on Monday, February 27, provided they worked on Friday, February 24 and Tuesday, February 28. They should also be reported as having worked a normal workday on Tuesday, March 7, provided they worked on Monday, March 6, and Wednesday, March 8, 1995, unless excused by approved contractual guidelines. If you have individual questions, contact the appropriate Personnel Director.
>
> Administrators, teachers, and secretaries are to be reported as having worked a normal day on Monday, February 27 and Tuesday, March 7 unless previously excused by approved contractual guidelines. Secretaries who worked should be scheduled for an equal amount of time off with the immediate supervisor's approval. That time off must not interfere with the efficient operation of the work unit.

Though the Fact Finder has read the aforequoted memoranda, the evidence does indicate that Paraprofessionals have not lost income, at least for the first two days of closing each year because of inclement weather. The District has proposed to implement the language in the expired contract and add the provisions as to working the day before and the day after the closing, as apparently set forth in the aforequoted memoranda.

The Association modified its initial proposal and at fact finding proposed that the language provide that there be no loss of income for the first two days of closing each year, if not rescheduled. As the Association noted:

> The district typically experiences two or more days each year when school is closed due to inclement weather. As the employer does not reschedule instruction for SMI and SXI students, the employer's proposal results in the certain loss of two days' pay for each employee in this unit. This represents a loss of total annual compensation of one percent (1%).

There is no reason to change the parties' past practice. The two days seems to be the normal experience and the District apparently does not reschedule SMI and SXI students. It would seem that it would be appropriate to incorporate the practice in the contract pursuant to the Paraprofessionals' modified provision, namely, to pay up to two days of lost time per year because of inclement weather if the classes are not rescheduled. Thus, the Fact Finder so recommends.

Health and Safety

The health and safety issue was raised in a memorandum dated October 13, 1993 from Lee Longfield, Executive Director PPIA and PEA, to Tom Anderson, Assistant Superintendent. This memorandum in part read:

> As you know, many students with special needs require lifting. When a classroom is staffed by its full complement -- a teacher and paraprofessional instructors -- there may be present sufficient personnel to life students in a manner which minimizes risk of injury to those lifting. I am informed that regularly assigned staff members have been trained in safe lifting techniques.
>
> However, with increasing frequency, when a paraprofessional instructor is absent, a substitute is not provided for that individual. There are then not sufficient personnel in the classroom to lift students as the training requires. It is also then not possible to lift students without substantial risk of injury to the employee.
>
> This situation could also arise when the regular classroom teacher is absent, and when the substitute teacher is not trained to lift and therefore does not participate with the paraprofessional instructors when lifting is necessary.
>
> I do not believe that the employer can require our bargaining unit members to perform work which exposes the employee to the substantial likelihood of immediate injury. Therefore, I request that the employer immediately take all steps necessary to eliminate the dangerous working conditions described above so that employees are no longer at risk.

These concerns were brought to the Fact Finder's attention in a memorandum dated December 2, 1995, by the Association's Advocate, which in its entirety read:

> 1) The ratio of adults to students in classrooms for the Severely Multiply Impaired (SMI), Severely Multiply Impaired (SMI) and Severely Emotionally Impaired (SEI) is

established by statute (Exhibit 5A).

2) The routine daily care of certain students requires that they be physically lifted by adult classroom staff [lifted from wheelchairs to toilets and back, from wheelchairs to standing frames for therapy and back, from wheelchairs to floor mats and back, from wheelchairs to changing tables and back, held upright for walking therapy, positioning for therapy, as examples.]

3) Certain students must be physically restrained by adult classroom staff to prevent or inhibit behaviors that expose the student, other students in the room, and adults present in the room or area to immediate risk of injury.

4) Employees are provided written procedures for lifting and restraining of students to safeguard the student and the adult from physical injury. The procedures require a specified number of adults working together to effect the procedure (Exhibit 5B).

5) Substitutes for classroom teachers and classroom paraprofessionals are routinely not assigned. The district cannot guarantee the presence of trained substitutes for the classroom teacher or the paraprofessional instructors when they are absent (Exhibit 5C).

6) Prior to 1993 classrooms of the students needing physical care and management were housed in a single building, the Hawthorne Center. In the absence of substitutes, adult staff from nearby classrooms could be shared as needed to implement the procedures.

7) In 1993 classrooms of students needing physical care and management were distributed among seven (7) buildings (Exhibit 5D). This eliminated the potential of sharing trained staff if needed in the absence of substitutes.

8) The Association gave written notice to the district of this health and safety concern in 1993. There was no response of any kind from the employer.
8) Non-special education administrators have ordered bargaining unit members to lift students in violation of the

procedures.

9) Directing or requiring bargaining unit members to lift students or to restrain dangerous student behaviors places the bargaining unit member and the student at immediate risk of serious injury.

10) The Association's proposal is directed only to those occasions when trained substitutes are not available and the requisite numbers of adults are not present to work with the student. The proposal protects the employee from being required or directed to act in manner which places the employees health and safety immediately at risk.

The proffered proposed language from the Association, based upon the two above memoranda, reads:

> Item 2 In the absence of the regularly assigned staff and of properly trained substitutes, no employee shall be required to manage and care for students where such intervention is inconsistent with training guidelines and/or places the employee's health and safety at risk.

The District objected to this proposal, noting that it would hinder the operation of the Special Education Program. There are two factors that have persuaded the Fact Finder, based upon the bargaining history, the art of the possible, and representations from the District, to recommend no change from the health and safety language in the 1992-94 language, if any.

On November 7, 1995, the parties reached agreement on the following Letter of Agreement, which would be attached to the resulting Collective Bargaining Agreement:

> Training for substitute paraprofessional instructors, with the assistance of the special education department and the appropriate personnel director will be conducted as needed. This training shall prepare substitutes to actively participate fully in the management and care of the students in the

> classroom where assigned.
>
> The District will assign permanent subs to the special education department to be used as needed on a daily basis. In addition to the permanent subs, the district will maintain a pool of subs that will be used on a call in basis.
>
> In buildings where SMI, SXI and TMI classes are located, other support staff will be trained and be available to assist PPIA staff and teachers in emergency situations.
>
> The District will determine the number of substitutes to be assigned in the special education department.

The significance of this Letter of Agreement to the problem being addressed is that, as represented by both Tom Anderson, Assistant Superintendent, and Tommaleta Hughes, Director of Personnel, the District will take steps to obtain additional substitutes to alleviate the problem raised by the Association.

There were also allegations made that trained special education substitutes were being channeled to other programs rather than the programs at issue. The District, through Assistant Superintendent Anderson and Personnel Director Hughes, have represented that steps will be taken to prevent such occurrences in the future.

The District in effect is seeking to address the problem raised by the Association. The art of the possible, recognizing that the Letter of Agreement has become a tentative agreement, and recognizing that the District is aware of the problem and is attempting to address the problem, would suggest that there be no additional contract language on the issue. This is an operational issue that the District should be permitted to address in the normal course of events.

The language proposed by the Association would never be agreed to by the District in bargaining because of the restrictions it puts on management. Instead, the parties will adopt the Letter of Agreement reached in an attempt to address the problem by training additional substitutes. In addition, there is a commitment to administer the substitute program so that qualified substitutes are not channeled to other programs. The Letter of Agreement and the aforementioned commitment as to the use of substitutes represents an "art of the possible" approach in attempting to work out the problem that both parties recognize exists.

But to place the restrictive language, as proposed by the Association, in the contract will not serve the interests of either the District or the Association. Bargaining would produce the results that the Fact Finder is about to recommend, as evidenced by the Letter of Agreement. Therefore, the Fact Finder recommends, recognizing that the parties will adopt the Letter of Agreement, no change in the 1992-94 contract langauge, if any, on this issue.

Economic Issues

The Fact Finder has grouped the issues listed as Items 3 and 7 on the list that was presented to the Fact Finder as economic issues for the purposes of discussion, namely:

3) Longevity

7) Fringe Benefits
   - Life Insurance
   - Long Term Disability Insurance
   - Holidays
   - Vacation

Dental Insurance
Vision Insurance

The current bargaining history in the Pontiac School District reveals that fringe benefits, namely, health care insurance, was considered in tandem with wage increases. In order to reach a wage settlement with the various settled bargaining units, the District bargained to restructure the provisions for health care insurance. In doing so, the District was attempting to contain its health care insurance costs as part of an overall strategy of fiscal management in order to keep the District from having a deficit fund balance. As the bargaining pattern evolved with the other settled bargaining units, the wage increases proffered, then accepted, were conditioned on changes in health care insurance. As to health care insurance, the Pontiac Education Association agreed to:

> 2.2 Restructed health insurance from MESSA Super Care II to MESSA Super Care I from a $.50 prescription co-pay to a $2.00 prescription co-pay.

With the Pontiac Education Association, the Pontiac Secretarial Association, the Pontiac Executive Secretary Association, and Engineers, the District was able to bargain the following change in health insurance:

> Changed health insurance from the Board's self funded Blue Cross Blue Shield to an insurance equal to MESSA Pak Super Care I with the $2.00 co-pay prescription rider.

The difference between the Pontiac Education Association change and the Secretaries and Engineers change was because the Secretaries and Engineers had

self-insured plans. However, the negotiated changes, as between the Teachers and the Secretaries and Engineers, reached essentially the same result.

Based on these negotiated changes as to health care insurance, the District and the Pontiac Education Association, the Pontiac Educational Secretaries, the Administrative Assistants (Executive Secretaries) and the Engineers negotiated a similar wage package percentagewise covering, depending on the unit, three and four year periods.

Though the pattern was set by the Pontiac Education Association, Secretaries, Administrative Assistants and Engineers, the Pontiac Paraprofessional Instruction Association has not been able to reach agreement with the District. The dispute is brought into focus by three statements that were presented to the Fact Finder. There had been a proposal in February 1995 from the Association, which read:

> ARTICLE 15 WAGE SCHEDULE
>
> Item 1
>
> | 1994-95 | 1995-96 | 1996-97 |
> |---|---|---|
> | 5% from January 1, 1995 | 5% | 5% |
>
> Item 4 Longevity
>
> Same as PPIA March 15, 1994
>
> ARTICLE 14 ECONOMIC FRINGE BENEFITS
>
> Section A Health Insurance
>
> I. PPIA will consider changing from the SD self funded insurance to MESSA Super Care I [carrier not to change life of the agreement]
>
> A) if the Board pays the $100.00 deductible for family and $50.00 for single

B) and the Board reimburses the employee annually for accumulated increased payments of the prescription co-pay

AND

C) The Board applies the savings from the change in insurance directly to the employee wage schedule.

THE ANTICIPATED SAVINGS TO THE EMPLOYER FROM THE INSURANCE SHIFT IS APPROXIMATELY $200 EACH MONTH PER EMPLOYEE, OR $2,400 ANNUALLY. THIS REPRESENTS THE EQUIVALENT OF 10.6% WAGE INCREASE IN ONE YEAR.

FOR THE ENTIRE PPIA BARGAINING UNIT, THE SAVINGS TOTALS VERY NEARLY $120,000 FOR THE DISTRICT, WHICH REPRESENTS A SIGNIFICANT SUM OF MONEY AVAILABLE TO MEET THE PPIA'S REQUESTS FOR WAGE AND BENEFIT IMPROVEMENTS.

II) The PPIA would agree to an additional step on its wage schedule as an offset to the wage schedule increase.

Sections B, C, D, E, I, J.
Same as PPIA March 15, 1994

The significant portion of this proposal was the expression that any savings concerning the change of health insurance should be factored into the wage pattern. A statement prepared by the Advocate for the District as to restructuring of Insurance read:

> Restructuring of Insurance: Revenue received from the restructuring of health insurance must not be automatically placed back into employee salaries as requested by the Association. Revenues must be available, and management must have the ability to apply these funds to the instructional program, and other areas in the district where there is legitimate need.

Based upon the health care restructuring, the Board, on December 21, 1995, as part of the fact finding process, made the following proposal as to the Association

concerning wages:

94-95	95-96	96-97	97-98
0% (cash bonus equivalent to 2 days)	2%	3%	2%

The economic offer seemed to follow the pattern of the Secretaries and Engineers, but provided in 1997-98 for a 2% wage increase.

The bargaining history and financial ability criteria stand out as a shining beacon of a lighthouse leading the way to resolution of the economic dispute. This Fact Finder can only recommend that the pattern set by the Pontiac Education Association, and continued with the Secretary and Engineers Associations, should be followed here, namely, that the health care insurance be reconstructed so as to be as follows:

> Changed health insurance from the Board's self funded Blue Cross Blue Shield to an insurance equal to MESSA Pak Super Care I with the $2.00 co-pay prescription rider.

As the Paraprofessionals' insurance is self-insured, then the pattern followed by the other units that were self-insured should be followed with the Paraprofessionals, and the Fact Finder so recommends.

The claim that this will bring economic savings may have some validity, but usually, with the inflationary costs of health care, changes are ultimately usually cost restraints rather than savings. If there had not been the health care insurance restructuring as to the settled bargaining units, then there is a serious question as to

whether even the modest wage pattern bargaining with those bargaining units would have evolved. And if there had not been the aforementioned wage pattern, it is doubtful that the Board would even have made, in fact finding, the offer set forth at page 38 of this Report.

Obviously, insurance cannot be retroactive. The recommended health care insurance shall become effective as soon as possible following the date of this Report. As to the other fringe benefits, namely, life insurance, long term disability insurance, holidays, vacation, dental insurance and vision insurance, the recommendation is there will be no changes in same. They shall remain as in the expired 1992-94 Agreement. This follows because there is no evidence that there were changes in these benefits in the other bargaining units. Rather, the emphasis was revising the health care insurance. This is understandable because there is only so much that can be accomplished under the art of the possible criteria during bargaining for a given contract.

This brings the Fact Finder to wages. The District in fact finding has made the offer quoted above. Yet, despite the mediation efforts, the District was not able to bring the contract with the Association to closure. The question is, what is the art of the possible in this situation, recognizing that the parties have had difficulty coming to agreement on an economic package?

There is the bargaining pattern with the other units serving as a guide. The contract expired in 1994. The fact that the District may be atempting to obtain a four year agreement is not unusual with this bargaining history for there were four year

agreements obtained with the two Secretary Associations. What does make this situation an exception is that the District is attempting to obtain a contract for the 1997-98 year, a year in which it has no agreements with any other bargaining unit. The District is proposing in fact finding that there be a 2% wage raise in 1997-98.

This 2%, as this Fact Finder has noted in the discussion of the Foremen's and United Skilled Agreements, has a value to the District in that it may set the bargaining pattern for 1997-98, a pattern that is most modest. It is a pattern designed to be consistent with the economic concerns of the District. The Fact Finder appreciates this.

The current wage pattern, based on the 1993-94 hourly rate of Association members, is as follows:

Minimum	Maximum
9.33	12.74

The District had presented certain comparables for consideration by the Fact Finder, stating that the wages are for employees "who perform the same or similar services, per contract 1994-95." The District, in noting "similar services," was referring to the services performed by Paraprofessionals. Although the comparisons are between the Association's 1993-94 wages and wages in other districts in 1994-95, this is not critical as the District's offer proposes that there be no additional wage increase in 1994-95.

The comparables offered by the District are:

District	Minimum	Maximum
Algonac	8.22	9.22
Avondale	8.98	9.76

Berkley	9.84	13.03
Bloomfield Hills	7.95	10.35
Clarkston	7.95	9.50
Clarenceville	8.58	10.23
Clintondale	8.21	11.45
Crestwood	8.19	10.05
Dearborn	9.24	11.67
Detroit	10.73	11.43
East Lansing	8.68	10.06
Fenton	8.50	9.10
Flint	8.33	9.76
Gibraltar	9.61	12.01
Grand Blanc	8.08	8.08
Grosse Ile	9.21	9.81
Jefferson	9.49	11.02
L'Anse Cruese	10.35	11.00
Lakeview	9.88	10.94
Lincoln Park	8.68	13.39
Livingston Intermediate	9.20	12.67
Livonia	8.62	12.07
Madison	7.01	9.14
Monroe Intermediate	7.78	10.85
Northville	9.80	11.91
Oakland Intermediate	10.65	14.02
Okemos	9.89	12.16
Oxford	7.46	8.31
Rochester	8.97	10.93
Romeo	8.50	11.54
Roseville	11.79	13.97
Southgate	7.90	8.73
Troy	9.87	11.88
Utica	8.24	8.98
Warren Woods	9.46	10.13
West Bloomfield	8.15	12.79
Woodhaven	8.44	10.95
Wyandotte	8.50	10.00
Van Buren	7.45	10.10

The District observes that it has listed 39 districts; that of the 39 districts, only 11 paid more that Pontiac at the minimum, and only five paid more at the maximum. The

maximum figure is the issue here because most of the members of the Association apparently are at the maximum.

There are two observations that can be made about the comparables. Some of the comparables are in geographical areas other than Pontiac, not having the same economic influence as in Wayne, Oakland and Macomb Counties, areas that traditionally pay more in public employment than in other Michigan areas. Algonac, for example, is in St. Clair County. Likewise, East Lansing is in Ingham County, whereas Flint and Fenton are in Genesee County. There is no geographical dividing line as to economic influences. Nevertheless, the economic influence of the metropolitan Tri-County Area cannot be overlooked.

The second observation to be made is that, in applying the bargaining history criteria, the Fact Finder looks to what the history of bargaining with an employer has brought in comparison with other employers. These parties, through bargaining, have concluded that the Paraprofessionals at Pontiac should be among the highest paid in the area. That is what the bargaining history reveals. If Pontiac was added to the comparable list, making 40 comparables, and assuming that the appropriate comparables would be the 40, Pontiac, in relationship to maximum pay, would be in the top 15%. This is where the parties have agreed Pontiac should be in relationship to other districts.

It may be that a decision has been made by both parties at the bargaining table that, because of the nature of the work at Pontiac, Pontiac Paraprofessionals are entitled to be among the highest paid in the area for the work performed. The Fact

Finder does note that there tends to be higher pay in the intermediate school districts. Oakland Intermediate School District has a minimum of $10.65 and a maximum of $14.02, the highest maximum of the compared districts. Livingston Intermediate School District, based upon the geographical analysis, is perhaps not a proper comparison, but nevertheless has a maximum of $12.67. Monroe Intermediate is lower, but is probably influenced by the economics of northern Ohio rather than metropolitan Detroit.

Then there are three school districts, two of which are in Oakland County, that seem to be above the norm. Berkley has a maximum of $13.03. West Bloomfield, which is acknowledged to be a more wealthy district than Pontiac, has a maximum of $12.79. But what is interesting is that Roseville, not particularly known for being a wealthy school district, has a maximum of $13.97.

The point the Fact Finder is making is twofold. The bargaining history criteria, when used in connection with comparables, would suggest that there must have been factors in Pontiac, considered by both parties at the bargaining table, to put Pontiac at the 15% highest range with the comparable proffered by the District. It may also be that Pontiac had factors that may exist in a district like Roseville that caused this evolving wage pattern. The second point is that the comparables, along with the bargaining history within the District, do not support the Association's demands at the bargaining table.

The offer of the District is most modest. The Fact Finder does know what this offer will produce in the way of the comparables in 1994-95, as the comparables are based upon that school year. There will be no change in the Paraprofessionals'

comparable standing, at least for 1994-95. Furtherore, as will be set forth below, the Fact Finder is recommending a three day bonus for the 1994-95 school year, which could mean that actually the Paraprofessionals might actually receive more money in their pockets, so to speak, although not on a base wage, than was revealed by the proferred comparables.

When the Fact Finder comes to the rest of the package, he acknowledges that the package is modest and might bring into question as to whether the Paraprofessionals can keep their comparable wages. This, of course, will depend on what the other districts bargain. Furthermore, it is difficult to compare, for example, Pontiac with the Oakland Intermediate School District and West Bloomfield which presumably have more economic wherewithal than Pontiac.

The problem here is that the District has to maintain its fiscal integrity and rebuild. The Fact Finder appreciates the aspirations of the Paraprofessionals. They have a difficult work environment because of the type of students they must service. For this, they are entitled to be compensated. But in the view of the Fact Finder, this is not the contract year to attempt to improve what the bargaining history over the years has brought, namely, being paid in the top 15%, even when compared with districts in the Tri-County economic area. The internal bargaining pattern dictates that this contract must be a contract of restraint.

It may be that by 1998 the other districts may have made economic improvements. If so, then the position of the Paraprofessionals may be more compelling. And this cannot be lost on the Board. The Paraprofessionals have a

difficult task and they must be paid accordingly. But, presently, they are being paid most competitively. And, in the end, they must recognize that they cannot expect to be paid substantially more than the pattern set within the District, which was set consistent with the District's financial ability to pay.

What the Fact Finder has just suggested is really applying a combination of the financial ability pay, the comparables, the bargaining history, and finally, the art of the possible.

That brings the Fact Finder to the art of the possible. There is no secret that probably, based upon the mediation efforts, that if the recommendations as to the Foremen and United Skilled Trades are followed, a contract will be reached. This is not necessarily the case with the Paraprofessionals.

Yet, an agreement must be brought to closure in the interest of both the District and the Paraprofessionals, and the children served.

Therefore, the Fact Finder recommends the following wages:

94-95	95-96	96-97	97-98
0% (cash bonus equivalent to 3 days)	2%	3%	2%

This provides for a bonus of three days not added to the base for 1994-95. This follows the pattern of the Secretaries, but is an increased bonus to three days because of the settlement for 1997-98.

The Fact Finder also believes, based upon the art of the possible, in order to bring this matter to closure, that a review of longevity should be made. The 1992-94

contract in Article 15, Item 4, read:

> A longevity entitlement shall be added to the wages of each employee annually beginning upon completion of five (5) years service to the distrcit and shall be paid each year thereafter according to the following schedule:
>
> | Years of Service | Amount |
> |---|---|
> | 5 | $175.00 |
> | 10 | $200.00 |
> | 15 | $225.00 |
> | 20 | $250.00 |
>
> The longevity amount shall be paid in the second paycheck in May of each year.

The work that the Paraprofessionals perform, working with students, has some analogy to the teaching profession. By bargaining history in Pontiac with the Pontiac Education Association, the District has developed a salary schedule, not unusual with other school districts in Michigan, providing for salary increments based upon teaching experience. Given the type of work that the Paraprofessionals perform, it would seem that as a Paraprofessional works in the District with children, that Paraprofessional gains the experience for which the District has been willing to pay teachers. By the same rationale, namely, bargaining history and comparables, recognition of the experience factor that the District is gaining as Paraprofessionals continue with the District should be recognized in this contract.

As the Fact Finder sensed the situation, the Paraprofessionals believe they were not being properly recognized for their services with the District. Changes in longevity would meet this concern, be consistent with bargaining history, both with the Teachers

and the fact that longevity has been a factor in the Paraprofessionals' contract in the past.

There is another reason for recognizing longevity. Presumably, with more experienced Paraprofessionals, the District will obtain more skilled employees in dealing with children. This skill should be recognized with some remuneration. It has in the past in the parties' contracts. It should in the future. Under the art of the possible criteria, this Agreement will probably not be brought to closure unless there is some such recognition.

Such recognition would not break the bargaining pattern. It will only be recognizing the nature of remuneration for professional services in the District. In this case it is the Paraprofessionals' services. Likewise, consistent with the District's financial ability, the recognition should be reasonable. Considering all these factors, the Fact Finder makes the following recommendation as to longevity:

Years of Service	Amount
5	$225.00
10	$250.00
15	$275.00
20	$300.00

Effective with the 1997-98 school year, the longevity should be:

Years of Service	Amount
5	$275.00
10	$300.00
15	$325.00
20	$375.00

Again, the Fact Finder, as he did with the United Skilled and Foremen, points out

that the Report is a jigsaw puzzle. Each part must fit in with the other parts. It cannot be taken in bits and pieces. Otherwise, the totality of the picture will not be recognized. In the view of the Fact Finder, this is the way to settle this dispute.

Retroactivity and Duration

The agreement shall be retroactive to July 1, 1994 and shall apply through June 30, 1998.

RECOMMENDATIONS

It is hereby recommended that the recommendations set forth in the body of this Report be adopted by the parties.

GEORGE T. ROUMELL, JR.
Fact Finder

April 5, 1996