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In The Matter of the Fact Finding Between:

MICHIGAN EDUCATION SUPPORT  
PERSONNEL ASSOCIATION

-and-

MUSKEGON AREA INTERMEDIATE  
SCHOOL DISTRICT

*Robert Browning*

MERC FACT FINDING

Case No. G81 E-745

1-14-83

APPEARANCES

For the Michigan Educational Support Personnel Association

Truman Forest, UniServ Director, MEA/MESPA  
Mary Huth, Local President  
Sandi Harvey, Chairperson, Bargaining Committee  
Sue Johnson, Local Vice President  
John Meeder, MEA Staff Research Coordinator

For the Muskegon Area Intermediate School District Board of Education

Charles L. Hitesman, Attorney  
Walter D. Finkbeiner, Deputy Superintendent, MAISD  
Roger A. Schecter, Administrative Assistant, MAISD  
Anne M. VanderMale, Attorney

FACT FINDER'S REPORT AND RECOMMENDATIONS

I INTRODUCTION

The parties having failed to reach agreement in collective bargaining negotiation and mediation being unsuccessful, the Association petitioned for fact finding under Section 25 of the Michigan Labor Relations and Mediation Act (MCLA 423.25; MSA 454(27)). On July 9, 1982, the undersigned was appointed by the Michigan Employment Relations Commission as Fact Finder. With the agreement of the parties, a pre-hearing

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conference was held on August 25, 1982 at the Offices of the Muskegon Area Intermediate School District. Subsequently, at the request of the Association and with the agreement of the parties, the Fact Finder on September 16, 1982 accompanied by Mary Huth, Local President; James Rashid, Administrator, MAISD; and Anne M. VanderMale, Attorney; visited several of the schools, namely Wesley School; South Shores; and the Muskegon Regional Center to observe the teacher's aides (the affected bargaining unit) in their special education work with the various levels of the mentally impaired children, some of whom were also physically handicapped: the categories are TMI-trainable mentally impaired; SMI-severely mentally impaired; and SXI-severely mentally impaired and other handicaps.

Hearings were held at the Offices of the Muskegon Area Intermediate School District on September 21 and 22, 1982; and on October 15 and 16, 1982. Post hearing briefs were timely dated November 12, 1982 and received by the Fact Finder on November 15, 1982.

## II ISSUES

The parties have stipulated there are ten unresolved issues before the Fact-Finder to consider in his fact finding report and recommendations.

The issues are:

- Union Security
- Lay-off and Recall
- Evaluation
- Health Insurance
- Paid Holidays
- Paid Vacations
- Pay for Bus Runs
- Longevity Pay
- Salary Schedules

Of the unresolved issues, three (3) are non-economic issues, namely: union security; lay-off and recall; and evaluation.

### III MUSKEGON AREA INTERMEDIATE SCHOOL DISTRICT

Muskegon Area Intermediate School District (MAISD) is one of the 58 intermediate districts in Michigan that operates at a regional level providing coordination and supplementary services to local school districts and serves as a link between twelve (12) local constituent school districts and the State Board of Education. The twelve (12) local constituent school districts are:

Fruitport Community Schools  
Holton Public Schools  
Mona Shores Schools  
Montague Area Public Schools  
Public Schools of the City of Muskegon  
School District of the City of Muskegon Heights  
North Muskegon Public Schools  
Orchard View School District  
Ravenna Public Schools  
Reeths-Puffer Schools  
Whitehall District Schools

These are the twelve K-12 constituent school districts located in the geographical area served by MAISD. The Board of Education of the MAISD is elected by the twelve constituents.

The MAISD has separate and distinct responsibilities with respect to general education and with respect to special education. The general fund budget is segregated from the special education fund and is not available for special education projects, nor is the general education fund budget of the MAISD available for financing of additional wages or improved fringe benefits payments to the approximate 80 teachers aides (Exhibit U-1). All aides and special education teachers are compensated from the MAISD special education fund. Employer's Exhibit 18 describes the distinction between Section 52 and Section 53 of the Education Code. Forty percent of the aides are employed in Section 52 programs and are subject to the bill-back process contined in the plan for funding special education. The remaining sixty per cent are employed in Section 53 programs which although arguably are financed 100% by State Funds, are, due to the failure of

the State of Michigan to reimburse at the 100% rate, are substantially supported by bill-backs to the local school districts through the MAISD plan for funding special education.

#### IV MAISD SPECIAL EDUCATION BUDGET

Annually, the MAISD Board of Education, after review by the twelve constituent school districts, adopts a special education budget. The MAISD consistently maintained throughout its testimony, that the budget is not a budget in the normal sense of the word "budget" but is a "revolving fund" with bill-back features to the twelve constituent school districts and with a "pre-determined" fund balance established by the MAISD Board of Education to be reserved against defaults by local constituent school districts and for other contingencies. The MAISD testified that any diminution of the pre-determined fund balance would necessarily require additional bill-backs to the constituent school districts to re-establish the pre-determined fund balance. The MAISD testified that additional bill-backs would cause economic hardships upon the budgets of the constituent school districts.

Special education is funded by local millage and supplemented by state aid:  $\frac{1}{2}$  mill was approved by Muskegon area electors on July 14, 1958;  $\frac{1}{2}$  mill on June 8, 1964; and 1 mill on July 11, 1973 (Employer's Exhibit 16, p.6). A further  $\frac{1}{2}$  mill was approved by the electorate on June 9, 1980. The Fact Finder from the record is convinced that the June 9, 1980  $\frac{1}{2}$  mill is not available for any payment of wages and fringe benefits, and is limited in both the taxes generated plus the income therefrom to the purpose of purchase, construction, renovation and equipment of facilities for central programs for severely handicapped students until their needs are met. Presently, the MAISD has committed this later  $\frac{1}{2}$  mill and funds generated to the purchase of a building and has pledged these funds as security to purchasers of tax anticipation notes.

The MAISD Special Education 2 mill operational millage is levied on the State Equalized Valuation of the District. Based on 1979-80 figures, MAISD ranks fifty-fifth

(55th) out of a total of 58 ISD's in the average S.E.V. per pupil. (Employer Exhibit 17-F) shows the ISD's (58) ranged from a high of \$97,817 to a low of \$25,053. Muskegon's S.E.V. is \$26,984.

The record established that the fund for special education "pre-determined" fund balance was \$230,000 and that the Board of Education's desire is to re-establish a fund balance of \$300,000. The \$230,000 undesignated fund balance is presently lacking \$148,999 which is State aid due and promised but to date not paid.

#### V MICHIGAN EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

The approximately eighty (80) special education teachers aides which constitute the bargaining unit, prior to their representation by the Michigan Educational Support Personnel Association (MESPA), were represented by Service Employees International Union and the last contract with that Union (Union Exhibit 11) expired on June 30, 1981. The last wage increase received by the aides was the increase contained in the SEIU contract which became effective July 1, 1980. MESPA obtained representation as a result of an election conducted on May 14, 1981. After the contract with SEIU expired on June 30, 1981, bargaining of a successor contract with MESPA began, however the parties were unsuccessful in their efforts in collective bargaining negotiations to arrive at a new contract, resulting in the ten unresolved issues which the Fact Finder is to consider in his report and recommendations.

The teachers aides in special education have CPR and first aid training. Broadly, the aides are involved in loading and unloading the buses which transport the children; riding the buses; assisting the students in feeding programs and toileting; implementing therapy programs occupational and physical and behavior therapy; and to assist the special education teachers in their classroom activities. Generally, a high school education or its equivalent is necessary for one to become a TMI aid. For SMI and SXI aides, the minimum requirements are a high school education or its equivalent, together with two years experience.

## VI FACT FINDER'S POWERS

The Fact Finder's recommendations are non-binding upon the parties as provided in the statutory powers granted to the Fact Finder in accordance with Section 25 of the Michigan Labor Mediation Act, "the findings shall not be binding upon the parties but shall be made public."

## VII DISCUSSION OF THE ISSUES AND RECOMMENDATIONS

### 1. Union Security (non-economic)

The Union (MESPA) proposes a modified agency shop or "service fee proposal" and cites that such "fair share" proposal is recognized in the Michigan Public Employee Relations Act (MCL 423.210 (2)). The Union (Exhibit U-15-2) proposes that non-members may either join MESPA or pay a service fee equivalent to dues paid by members. Enforcement of the service fee is the sole responsibility of MESPA. Non payment of the service fee shall not cause the discharge of any non-member.

The Employer's proposal is that the union security language of the predecessor contract with SEIV be continued. Under the Employer's proposal, employees electing to join the Union must maintain their membership for the duration of the contract, with the exception that during the last thirty (30) days of the contract's term, an employee has the right to discontinue membership by notifying the Union and Employer in writing.

Of the approximately eighty (80) aides the Employer points out that in the May 14, 1981 representation election 21 aides voted for SEIV; 32 aides voted for MESPA. The balance did not vote. The Employer states that it has never entered into a labor contract with a labor organization which provided for an "agency shop" provision.

In view of the number of aides that do not belong to MESPA; that the Employer does not have an "agency shop" provision in any of its contracts; that while this is a mandatory subject of bargaining, the fact finder from the record does not find any evidence of bad faith on the part of either party in bargaining on this subject of union security (modified agency shop) and that such requirement has not been negotiated with

the public Employer, the requirement of "fair share" of the statute is lacking, therefore, the Fact Finder recommends the adoption of the Employer's proposal.

2. Lay-off and Recall (non-economic)

The Union proposes the following language (new language underscored).

IX LAYOFF AND RECALL

9.1

B. Employees shall be recalled in the reverse order of their layoff. In a program, probationary employees shall not be recalled or new hires made until all employees with seniority have been recalled.

C. A laid off employee may refuse recall to a position of less time than the normal work day/work week without loss of recall rights.

D. An employee recalled to, or transferred to, another program shall have the right of first refusal should a position become vacant in the program from which the employee was displaced.

The Employer proposes the following language (new language underscored).

LAYOFF AND RECALL

9.1

B. Employees shall be recalled in the reverse order of their layoff provided the recalled employee has the minimum qualifications to do the job. In a program, probationary employees shall not be recalled or new hires made until all employees who have the minimum qualifications to do the job have been recalled.

C. A laid off full time employee may refuse recall to a part time position.

The union in its post hearing brief stated the Employer is demanding to insert new language with regard to minimum qualifications at time of recall.. The Employer indicated at hearing that "minimum" qualifications need not be defined in the Agreement

as these qualifications are defined by the State Department of Education. The Union states that the Employer makes no such reference to the Department of Education in its proposal.

The Employer in its brief states the qualifications of teachers aides are promulgated by the Michigan Department of Education and the level requirements are higher for SMI and SXI aides than for TMI aides.

The Fact Finder recommends that (Article 9.1B) read as follows:

9.1

B. Employees shall be recalled in the reverse order of their layoff, provided the recalled employee has the minimum qualifications to do the job, as promulgated by the Michigan Department of Education. In a program, probationary employees shall not be recalled or new hires made until all employees with seniority, who have the minimum qualifications to do the job, as promulgated by the Michigan Department of Education, have been recalled.

The Fact Finder further recommends that (9.1 C) read as follows:

9.1

C. A laid off full time employee may refuse recall to a position of less time than the normal work day/work week without loss of recall rights.

The Union points out that the only definition of "full time" in the predecessor Agreement ties the aides working day to the teachers work day.

The Fact Finder does not recommend Union's proposed clause 9.1D being persuaded by the Employer's argument that the inclusion of such a new clause, in its proposed language, would create interpretative application problems for both parties, and without further clarifying language, cause confusion among the teacher's aides as to its interpretation and application among themselves.



### 3. Evaluation (non-economic)

The Union proposes that Article XIII, 13.8 read as follows:

- 13.8 Every employee shall be evaluated by his/her immediate supervisor. All monitoring or observation of the work performance of an employee shall be conducted openly and with the full knowledge of the employee. Evaluation shall only be conducted and written by the employee's immediate supervisor or an administrator designated for such purposes.

The Employer proposes that Article XIII, 13.8, read as follows:

- 13.8 Evaluation may be conducted by the aide's immediate supervisor or an administrator designated for that purpose, providing all monitoring or observation of the work performance of an aid by an administrator for evaluation purposes shall be conducted openly and with the full knowledge of the employee. The evaluation shall be discussed with the employee.

The Union is concerned that the openness of the evaluation and full knowledge of the employee is limited in the Employer's proposed language to evaluations conducted by an "administrator" and does not apply to evaluations by the aide's immediate supervisor, e.g. the teacher to whom the aide was assigned.

The Fact Finder is convinced that it is reasonable and fair to require that such evaluations be conducted openly and with the full knowledge of the employee (aide) whether it is conducted by an administrator or teacher and recommends that the Union's proposed language for Article XIII, 13.8 be adopted.

### 4. Health Insurance

The Employer proposes a cap on health insurance coverage and the Union does not want a cap on health insurance cost coverage. The cap contained in the former agreement was adequate to cover increased insurance premiums during the 1981-1982 school year. The Employer expended \$7,038.24 or a 9.17% increase in insurance premiums paid on behalf of bargaining unit members over that paid during the 1980-81 school year. The Employer's proposal for the 1982-83 school year will require additional expenditures of \$15,241.68 or a percentage increase of 19.87% over the cost incurred during the 1980-81 school year. The Union's proposed non cap increase would amount to 21.26% for 1981-

82 and 39.64% for 1982-83 over 1980-81. Since 1981-82 coverage has been paid by the Employer the Fact Finder does not recommend any retroactivity for that period. Further in this day of rapidly escalating health insurance costs, the Fact Finder does not find the cap position of the Employer as proposed to be unfair as also applied to 1982-83. The cost to the Employer for 1982-83 is \$91,966.55 total costs. The total cost of the Union proposal (no cap) would be \$107,139.48. The Employer has in its proposal increased the cap. The Fact Finder finds it to be reasonable and recommends the proposal of the Employer concerning health insurance be accepted by the parties.

5. Life Insurance

The Union proposes substantial benefit increases. The Employer has offered maintenance of the existing program.

The current life insurance contract covers the following classifications: teacher, teacher aide, secretary, custodian, data processing and technician. The current range is as follows:

<u>CONTRACTED SALARY</u>	<u>AMOUNT OF POLICY</u>
3,000-6,000	5,000
6,001-9,000	7,500
9,001-12,000	10,000
12,001-19,000	15,000
19,001-or more	25,000

The Employer maintained the current policy during the 1981-1982 school year for a total cost of \$40,991.04 for the teacher's aides (bargaining unit). This was an increase of \$7,186.32 or 21.26% over 1980-1981. For 1982-1983 the Employer's cost under its proposal would be \$44,760.96, a percentage increase of 32.41% over 1980-1981. The Fact Finder agrees that since no employee died in the period, retroactivity should not apply. The Union's proposal to increase the coverage would result in a total cost for 1982-83 of \$60,675.84 or a 79.49% increase over the 1980-81 costs. The Fact Finder

is not convinced that the Employer's budget "pre-determined fund balance" for special education can afford this proposed union increase. Further, the current life insurance coverage provided by the Employer for teacher's aides is comparable or the same as other employees of MAISD, as set forth earlier in this section. The Fact Finder recommends no change in the current life insurance program and that the Employer's proposal be accepted.

6. Paid Holidays

The Union requests an additional paid holiday, the 4th of July. The Employer is opposed to this. Presently the aides receive holiday pay on all holidays which occur during the regular school year: Labor Day, Thanksgiving Day, Day After Thanksgiving, Christmas Day, New Year's Day, Good Friday (P.M.), Memorial Day and Hackley Day.

The Employer points out that the 4th of July does not occur within the regular school year and that payment of an additional holiday would constitute additional payment without additional work.

The Fact Finder does not recommend that the 4th of July be a paid holiday.

7. Paid Vacations

The Union made a new demand in bargaining for paid vacations and proposed that each employee, after completion of the probationary period, shall be credited with vacation days according to the following schedule:

0-2 Years	5 Days
3-10 Years	10 Days
11-15 Years	15 Days
16 + Years	20 Days

Vacation days shall be paid based on the employees regularly scheduled hours and straight time rate of pay. Should an employee terminate his/her employment during the year, shall receive any unused vacation credit accrued in the current calendar year.

The Union further proposes that vacation time shall be taken in whole or in part of any given time by the employee, including time when school is not in session.

Employer's Exhibit 16, Exhibit V-7, indicates the cost of the Union's vacation proposal would be \$39,966 if the aides would take their vacation during breaks in the school year. If vacations were allowed during school working days, other such additional costs as substitute's pay and related costs, would consequently increase the costs.

The Employer points out that no employee in an academic setting receives vacation with pay. Teachers do not receive vacation pay. Teacher's aides do not presently receive vacation pay. They are paid on an hourly basis for hours actually worked when school is in session and during periods of in-service training or other school activities.

In view of the depressed economy of the Muskegon Area, cutbacks and State-aid withheld and the additional fact that no teachers or aides presently receive paid vacations, and the proposed cost of such a program, the Fact Finder does not recommend paid vacations for teacher's aides.

#### 8. Pay for Bus Runs

The aides take turns in supervising students transported from the Muskegon Regional Center to South Shore Junior High School and returning. The transportation occurs during the aide's regular work day and the aide receives the regular straight-time hourly rate of pay for time spent on the bus.

The post bargaining history show that beginning in 1979, through negotiations with the predecessor union,, SEIV, in addition to hourly pay for riding buses the Employer agreed to an additional payment of \$1.00 per trip. The Union proposes that the \$1.00 per trip be increased to \$1.25 per trip retroactive to July 1, 1981.

Employer's Exhibit 16, Exhibit V-8, indicates the additional cost of this increase would be \$1,631 per year.

Testimony of the Union during the hearing indicated that riding the buses and maintaining order and discipline on the bus is at times not an easy or welcome

responsibility.

The Fact Finder does not recommend retroactivity but does recommend to the parties that the aides additional pay for riding buses be increased to \$1.25 upon the parties ratifying a new Agreement.

9. Longevity Pay

The Union proposes a 9% increase annual longevity pay provided for by the prior contract.

The Employer's proposal is that the existing longevity pay, which provides annual increments of \$100.00, be continue. The Employer has already paid the longevity pay based on the old agreement, for the year 1981-82. Employers Exhibit 16, Exhibit V-6, shows that the Union's 9% proposed increase, would for 1982-1983 cost an additional \$4,970 for the 1982-1983 school year, a percentage increase over 1980-1981 of 114.3%.

The Fact Finder observes that from the record the existing longevity pay program is consistently applied throughout the District.

The Fact Finder recommends no change in the existing longevity pay procedure.

10. Salary Schedules

The Union proposes a retroactive wage increase of 9% for the contract year July 1, 1981 to June 30, 1982; and a 9% retroactive wage increase for the second year of the contract July 1, 1982 to June 30, 1982. Exhibit V-3 shows that the dollar increase over 1980-81 would amount to \$107,693 for 1981-82 a percentage increase of 14.7%; for 1982-83 the dollar increase over 1980-81 would be \$216,452-a percentage increase of 29.55% over 1980-81.

The Employer's proposal is a freeze on wages; no experience increment credit from 1980-81 to 1981-82 (wage freeze) and a two step experience increment allowed over 1980-81 upon ratification of a new agreement (no retroactivity).

Employer's Exhibit B-3 was prepared by the Employer to acquaint the Fact finder with the costs of the Board proposal, if the Fact Finder recommended full retroactivity, which the Employer argues should not be granted. If retroactivity is not granted, the cost

would equal a pre-rata share of the proposed 1982-83 cost as evidenced by the last column of Employer's Exhibit B-3.

Employers Exhibit B-3 sets forth that if retroactivity were granted by the Fact-Finder with regard to the Board's proposal the dollar increase over 1980-81 for 1981-82 would be \$34,553-a 4.72% increase over 1980-81; and the dollar increase for 1982-83 would be \$62,216-a 8.49% increase over 1980-81.

Exhibits A and B, furnished by the Employer, at the request of the Union, and attached to the Employer's post hearing brief, acknowledge that wage increases had been granted to employees, other than employees represented by MESPA, for the 1981-82 school year. Teachers under the terms of their previously negotiated contract received a 7.84% increase for the 1981-82 contract year. With respect to administrators increases were granted which varied between 8% and 15%. The Employer in its brief states that in September 1981, consistency and equity throughout the school district might have dictated a wage increase in excess of that offered by the Employer to MESPA. The Employer states that since the parties involved in this fact finding could not consummate an agreement in 1980-81, the subsequent impact of executive orders on both the Intermediate School District and on the constituent school districts had created the situation where the special education fund and the constituent school district are no longer financially able to pay wage increases comparable to those granted to employees other than MESPA employees.

The Union in its brief states that the Employer needs to reshape its budgeting priorities and that the district looks upon teacher's aides as being not very important in the delivery of special education services and that the District should redefine "priority expenditures" in its bill-back formula.

The Fact Finder is of the conviction based upon the record that the Employer is not able to pay the 9% wage increases, retroactive for two years. The Fact Finder is not convinced that the employees should not receive a wage increase beyond that offered by

the Employer, thought Muskegon is a depressed area and the District has experienced State cut-backs in aid to education.

Confronted with the awesome responsibility of "Monday morning quarterbacking" on the wage proposals of a two year agreement with 18 months already past and negative school-aid cutbacks deferred during the time period, the Fact-Finder recommends the following wage proposal solution for the serious consideration of the parties and hopefully their mutual ratification.

The Fact Finder recommends that the offer of the two step increment by the School Board Employer become effective as of the beginning of the 1982-83 school year, namely July 1, 1982. The Fact Finder points out that there would be no wage increase for 1981-82; when teachers received 7.84% increase and administrators between 8 and 15%; that the Employer has expressed a willingness to grant the two step experience increment upon ratification in 1983; that this recommendation would increase the employer's offer (due to retroactivity) by approximately  $\frac{1}{2}$ , since six months have already passed in the 1982-83 school year.

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Robert F. Browning  
Fact Finder  
1000 Washington Sq. Bldg.  
Lansing, Michigan 48933

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