1549

Schoke

FF OVID-ELSIE AREA SCHOOLS

3/11/76 —

Fact finding Opinions

STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

FACT FINDING

In the Matter of Fact Finding Between

OVID-ELSIE AREA SCHOOLS

-and-

OVID-ELSIE EDUCATION ASSOCIATION

Case No. L75 H596

FINDINGS OF FACT AND RECOMMENDATIONS

APPEARANCES:

For the Board:

Donald Kenney, Superintendent
Harry Bishop, Representative for Board
Blaine Lentz, High School Principal
John Jacobitz, S.E.T. Representative

For the Association:

Barbara Roberts, Executive Director
Dean McKay, Chief Negotiator
Alvin Dickens, OEEA President
Carol Coe, OEEA Past President
Ted Beuhler, MESSA Representative

The undersigned, Barry C. Brown, was appointed as fact finding hearing officer and agent of the Michigan Employment Relations Commission by its Acting Director, Mr. Robert Pisarski, on November 13, 1975. Hearings were conducted in the Ovid-Elsie Area Schools Administration Building on December 16, 1975 and January 16, 1976. Both parties presented exhibits and arguments in support of their positions and post-hearing briefs were submitted. On February 9, 1976 the Association's and Employer's briefs were received and thereafter the record was closed.

BACKGROUND

A prior collective bargaining agreement between these parties expired on August 31, 1975. Negotiations for a new agreement started in the Spring of 1975 and continued frequently but unsuccessfully until the new school year opened in the Fall. The parties then agreed to extend the contract on a day to day basis with a general continuation of the past benefits and terms while they continued to bargain to reach a new agreement. Shortly after the start of the school year the employer changed from a Michigan Education Special Services Association (MESSA) health insurance program to another group health insurance program offered by SET, Inc.

The Association filed for fact finding on September 22, 1975 when the parties were unable to resolve the impasse on several issues. At the time of the hearings the following issues remained in dispute:

1) Insurance - selection of carrier
2) Salary
3) Jury Duty
4) "Act of God" days
5) Elementary relief time
6) Sick day accrual

1. Insurance - Selection of Carrier

The Association originally demanded a continuation of the MESSA health insurance progarm and a renewal of the contract language employed in the prior, expired agreement. The Association's original position in negotiations was that the Ovid-Elsie Board should pay the entire MESSA Super-Med II premium.

That is, the employer should pick up the total prior premium rate and also the 1975 increase. Subsequently, and at the fact finder's hearing, the Association indicated the teachers had modified their demand and they now would agree to individually pay all of the difference between last year's rate and this year's rate if they could retain the MESSA program. Also, they suggested another compromise which they would accept, that is, let the health insurance program specifications be negotiated, put the resultant program out on bid, and award the bid to the lowest qualified bidder. Further, a teacher could elect coverage under MESSA even if that program was more costly if the teacher was willing to personally assume the greater cost.

The Board's position is that it has provided a health insurance program (SET) that is equivalent to Super-Med II under MESSA. The Board selected this program at the start of the school year. They do not believe they are legally required to bargain over the health insurance carrier. The Board has assumed the full cost of the new program under SET. They do not want to return to the MESSA program, even it it costs the Board less because of teacher contributions.

The Association supports its position by citations and arguments summarized as follows:

1) Employers are legally required to bargain over the issue of the selection of insurance carriers.
2) The history of the Ovid-Elsie bargaining relationship demonstrates the issue of the selection of the carrier is and has been significant and that it is bargainable.
3) The OEEA membership has historically been very concerned about the selection of the insurance carrier and it is an important collective bargaining issue to them.

4) The School Board is willing to pay more to provide the SET program than it will to provide the MESSA program, thus cost is not a factor to them.

5) The MESSA program offers different and better coverage than does the SET program.

6) The MESSA administration of their program is more beneficial to the teachers than is SET's administration of their program.

7) The MESSA program will continuously improve its benefits and plow back dividends into such improvements. The SET approach is to freeze benefits and to return any savings realized to the school boards.

The Board supports its position by citations and arguments summarized as follows:

1) The past contract language did not require that a specific carrier be used but rather named MESSA only as a basis of comparison.

2) The Board has paid the entire health insurance premium in the past and it is paying it now, thus, it should have the exclusive right to select the carrier.

3) The coverage of the SET plan has not diminished the health insurance protection to the teachers.

4) The Board will save money in insurance premiums under the SET program.

5) Many fact finding and arbitration awards have supported the decision of other school boards to unilaterally change carriers.

6) MESSA can unilaterally change health insurance carriers, benefits and coverage without bargaining with affected employees.

7) MESSA may utilize any dividends they receive to defer increases in premium rates or to improve benefits without collective bargaining.

FINDINGS OF FACT

The law is clear that health insurance is an important part of an employee's compensation and a subject of collective bargaining. However, the parties need not reach agreement on that topic in order to satisfy the legal test of bargaining in good faith. The parties here have bargained extensively on that topic of health insurance and they have reached an impasse.

Both the employer and the employees' association have argued in detail over whether the selection of the insurance carrier is a negotiable issue. First, it appears to the fact finder that the employer has bargained about the topic on both past and present negotiating sessions. Thus, it would seem the employer's legal and practical arguments are diminished by that fact. It was its own decision to consent to negotiate on that issue. In the cases cited by the employer to support their prospective refusal to bargain on this issued there is no parallel to the employer's decision to cease bargaining over an issue that was a topic in prior bargaining history and a part of prior contract clauses.

Secondly, the dispute between the Board and the Association here is not over the selection of a "carrier" but rather over the choice of insurance

"agents."[1] Neither the SET or the MESSA programs guarantee who will be their insurance carrier. Indeed both organizations have changed carriers in recent years. Both parties' briefs acknowledge that we are dealing here with servicing agents and group insurance programs. Thus, the fact finder observes that neither the Board nor the Education Association need bargain over the topic of health insurance carrier. However, that conclusion does not answer the real problem of whether they must bargain over the health insurance program and the selection of a servicing agent.

There does appear to be ample evidence that shows the topic of the insurance program and the servicing agent has been a topic of negotiations since 1968. While the intent of the language of the prior health insurance clause is not clear, it did name MESSA specifically. Further, the teachers and their bargaining representatives have expressed a concern in the past about their servicing agent. It seems certain that the teachers believe that they will receive better service and that they can better rely upon MESSA. This factor involves a state of mind which may not be logical or measurable but which can greatly magnify the importance of a seemingly minor contractual provision in the minds of the

---

[1] Arbitrator Robert Howlett stated in his 1974 Kent City Community Schools decision (AAA 54-39-0801-73):

> "...I was persuaded that the controversy is primarily an attempt by the Michigan Education Association to "sell" the insurance administered by MESSA and an attempt by the Michigan School Boards Association to "sell" the insurance administered by SET. The dispute over the coverage which is to be provided the teachers... seems to be secondary."

Similarly, Fact Finder Richard Bloch observed in three earlier MEA-School Board disputes of a similar nature:

> "First, neither the Association nor the Board should be in the business of selling insurance or acting as agents for those who do. ...[T]o the extent that either party promotes its plan with an eye to benefiting the insurance carrier as opposed to the school system and its employees, its efforts are misguided. The coverage must be selected with an eye to the broadest and most reliable coverage for the employee at the least cost to the employer and the taxpayers. Any other motive is unacceptable."

members of the bargaining unit. The nearly unanimous actions of the teachers in the Fall of 1975 demonstrates the degree of their concern about the selection of the servicing agent.

The selection of the servicing agent in the case at hand goes well beyond the mechanical and legal duties and responsibilities of an insurance carrier. The impact of who is the servicing agent upon the individual teachers is more important then whether John Hancock or Mutual Benefit Insurance companies underwrite the insurance program that has been selected. The issue is how the program will be administered. There are very basic policy and administration differences between SET and MESSA. Thus, a change in the selection of agents can vitally affect the teacher's terms and conditions of employment.

For all of these reasons, the fact finder concludes that the selection of the servicing agent for health insurance is a topic that is a mandatory topic for collective bargaining. The Board should continue to negotiate with the Association on this topic. This recommendation of the fact finder is consistent with the criteria set forth in the leading cases on the subject. [See Bastion-Blessing v N.L.R.B., 474 F 2d 49 (1973); Connecticut Light and Power Co v N.L.R.B., CA 2, 82 LRRM 3121 (1973); Roseville v Local 614, IAFF, 220 NW2d 147 (1974)]

The fact finder has reviewed both parties' proofs regarding the benefits and coverage of their respective insurance programs. The Board states that it has offered a program that is the equivalent to MESSA Super-Med II in coverage and benefits. The Association has contended that the SET program has major differences and in overall does not provide satisfactory or comparable coverage and benefits. The fact finder concludes that the insurance certificates and the

master contract for both of the policies utilized by SET and MESSA are substantially the same. In fact, the carriers and their policies could be interchanged and the beneficiaries would probably not detect any significant change. However, the fact finder has concluded that there are significant differences in administrative and policy matters governing the health insurance programs of MESSA and SET. It seems clear that from the teachers' viewpoint the MESSA approach is superior. They have confidence in that organization; they believe the MESSA administration to be more teacher-oriented and they feel the scope and level of benefits of MESSA will be regularly upgraded to their advantage. Were this the only consideration before the fact finder he would recommend a total adoption of the OEEA's initial demand.

On the other hand, the Board specifically objected to the Association's approach of bargaining only a health insurance premium level and not a benefit schedule. Further, the Board notes with disapproval that benefit levels and coverage may be changed unilaterally by MESSA without any employer participation. In their oral argument they indicated that this practice insures higher premiums in subsequent years and it is fiscally irresponsible. Finally, the Board notes that MESSA may use any dividends they realize from a year of good experience to expand benefits or to temporarily defer premium increases. The fact finder can understand the Board's concern about its lack of control over such a major employee cost item. However, nothing would prohibit the employer from bargaining contract provisions which contain a specific health insurance benefit schedule which would remain fixed for the life of the agreement. Such an agreement with the Association could spell out the employer's right to negotiate about new benefits or broadened coverage. Such a new approach could be handled

through MESSA, SET, another agent or a carrier. Thus, the Board's objection to the MESSA approach to health insurance could be cured by collective bargaining.

The Board's approach of using a comparable servicing agent (SET) to establish a health insurance program which generally excludes teacher participation in policy or administration seems even less desirable than is the equally one-sided MESSA approach which excludes employer participation. The consumers and beneficiaries of the program (teachers) should have some voice in day to day administrative and policy matters of a program as important to them and their families as is health insurance. For these reasons the fact finder recommends that the parties bargain benefit levels and other specifications for group health insurance and that those benefits continue unchanged for the contract's duration. In this way both employer and employee will have equal control and imput over this matter from one negotiation session to the next. The benefits and costs can be established and the relative importance of who will be the servicing agent will be diminished.

The Board has a legitimate interest in the cost of its employees' health insurance program. To the extent that they cannot control the long term costs or the distribution of costs under the MESSA program their protests are proper and in the public interest. The mounting inflationary effect of health care cost is a major problem in our society and a prime source of real income erosion. However, in the short term the Board does not seem interested in cost. The unilateral adoption of 100% premium payment of the SET health program insurance premiums did increase the district's employee costs by more than $7,000.00 in this school year. The most recent Association position on health insurance would have

cost the employer less in this year. Thus, cost does not appear to be a controlling factor in the Board's decision or in the impasse before the fact finder.

In conclusion, it is the Association's compromise position that seems most reasonable in this dispute in the light of the facts determined above. When the specifications have been negotiated (as suggested in the foregoing) the program should then be put out on bid and the lowest bid accepted. The bidders list should include MESSA, SET, Blue Cross - Blue Shield and any others who are qualified to meet the agreed-upon specifications. This solution has been successfully adopted in several other school districts.

Finally, the fact finder also recommends that the parties adopt contract language allowing alternative health insurance coverage. Several districts in the state have primary coverage with one health insurance program but they allow a teacher to insure through certain named alternative programs if they assume the additional cost. Thus, the Ovid-Elsie Board of Education could continue its SET coverage but allow a MESSA election if the teacher would assume the additional cost.

2. Salary

The Association's final salary position:

1975-76*		1976-77**	
B.A.	M.A.	B.A.	M.A.
$ 9,172	$ 9,870	$ 9,172	$ 9,870
9,651	10,369	9,651	10,369
10,096	10,857	10,096	10,857
10,775	11,597	10,775	11,597
11,461	12,338	11,461	12,338
12,146	13,078	12,146	13,078
12,832	13,819	12,832	13,819
13,516	14,558	13,516	14,558
14,202	15,299	14,202	15,299
15,653	16,039	15,753	16.039
	16,849		16,949

*Rounded Off to the Nearest Whole Dollar
**+ 5% Board Paid Retirement

The Board's final salary position:

1975-76		1976-77**	
B.A.	M.A.	B.A.	M.A.
$ 9,016	$ 9,702	$ 9,172	$ 9,870
9,486	10,192	9,651	10,369
9,918	10,672	10,096	10,857
10,591	11,399	10,775	11,597
11,265	12,128	11,461	12,338
11,938	12,855	12,146	13,078
12,613	13,583	12,832	13,819
13,286	14,310	13,516	14,558
13,960	15,038	14,202	15,299
15,386	15,765	15,486	16,039
	16,562		16,662

**+ 5% Board Paid Retirement

The Board and the Association tentatively agreed to a salary schedule on October 28, 1975. The following day the Association membership voted favorably on that proposal. They accepted their negotiating team's recommendation to not press for a greater increase or further payable extra compensation. Subsequently, Mr. Kenney and Mr. McKay discussed the formal ratification by the parties of their salary schedule. Mr. Kenney finally decided that all matters in negotiation should be resolved at one time and so he would not place his signature on a final wage agreement.

The original salary proposal was made by the Board when the district anticipated a 2% reduction in state revenues. More recently that actual level of reduction in the Governor's Executive Order was 2.3%. The Association's final salary position presented above reflects a .3% reduction from the tentative settlement of October 28. The Board's final position reflects a full 2% cut

from their former position for the 1975-76 school year. The Board said they were not claiming that they could not pay the salaries sought by the Association but rather they relied upon the equitability of their own position. They also argued that their proposal represents a sizable economic gain for the teachers, is in line with the surrounding districts and is reasonable in light of all of the facts.

There was limited arguments and evidence by either side about the salary levels of comparable districts or of the rationale behind either proposal. The two proposals are only a few dollars apart. The teachers say they had an agreement from which the Board cannot now retreat. The Board says that the Governor has now reduced their revenues and they have reconsidered all factors and they have now made a new offer they believe is justified.

Legally, the Board is not bound by various tentative settlement proposals they made during negotiatons. All parties agree the Board representative did not formally ratify and initial the wage proposal of October 28th. However, the evidence does support the Association's claim that their members gave up several of their economic demands in return for and in reliance upon the Board's offer. Secondly, the Superintendent did several times voice his intention to sign the wage settlement thus further lulling the Association into the belief that the salary matter was concluded. Finally, the Board made its original offer believing its revenues would be cut by 2%. The actual cut was 2.3%. The Association has reduced its final salary position by .3%. Thus, the Board cannot show that there is a fiscal basis for the 2% lesser salaries now offered compared to the offered schedule of October 28, 1975.

The fact finder recommends that the salary schedule now proposed by the Association be adopted. It was a reasonable product of the parties in negotiations now reduced by .3%. Conditions have not changed sufficiently recently to support the Board's position. The Association's schedule is equitable and not inconsistent with the compensation in comparable districts.

3. Jury Duty

The Board proposed that the language of Article XIII, Section A contain a provision which reduces a teacher's salary by the amount of compensation they receive from the court.

The Association wishes to retain the present language and practice which allows the teacher to retain the compensation for jury duty while on paid leave from the school district.

The Board shows that its proposal is the general practice in comparable school districts. They also note that in addition to paying the teacher's salary while they are on jury duty the Board must also compensate a substitute teacher at the rate of $28.00 per day.

The Association notes that many teachers will prepare lesson plans or correct papers when they return from jury duty. However, the Association did not distinguish these duties while on jury duty from the same duties required after a day of teaching. There seemed no support for the extra compensation.

The fact finder recommends that the Board's suggested language be adopted.

4. "Act of God" Days

The Board proposes that Article VI Section K of the Agreement be modified to provide that when school is closed for more than one day due to an act of God

(such as a heavy snowfall) that the teachers be required to report to work on the second day. If any teacher does not report on the second day they will lose one day's salary.

The Association states that this modification is inconsistent with the expectations of surrounding school boards; it may place teachers in the often hazardous situation of trying to travel on dangerous roads and it is a harsh solution to what has been virtually no problem.

The Board did make a strong argument that very often mud or snow conditions may prohibit travel on rural roads by the heavier school busses but passenger cars can move about freely and safely. During such times they expect to utilize their staff's time even though there are no students present. The Board notes that some teachers report regularly in times of school closure while others never report. The Board seeks to clarify the confusing language now in the agreement.

The fact finder recommends that the following language be adopted:

> "Beginning on the second consecutive day of school closure due to an act of God the staff will report to work or if they cannot, telephone their supervisor to receive a work assignment and to indicate when they can report to work. Failure to do so will result in the time absent being charged to personal business or if that is depleted, sick leave."

The fact finder believes this language is clearer, represents a compromise in that work may be assigned in a location other than the teacher's usual work station, and it avoids the possible numerous "sickness" reports that could re-

sult in the second day of an act of God school closure period under the Board's proposal.

5. Elementary Teacher Recess Time

The Board would delete all of Article V Section C as follows: "Elementary teachers will be provided two (2) duty-free fifteen minute periods during the instructive day." The reason for this change is that the Board has had problems in implementation which has created a hazardous condition of improperly supervised students during recess. The Board states that two fifteen minute daily "breaks" for the teachers creates impossible administrative problems in properly watching the children while the teachers are off duty. The district had not employed sufficient aides or devised a system which has fully and properly supervised the children until the teachers return to duty. Thus, the Board proposes the change shown above.

The Association notes that this language was just added to the Agreement in the last negotiation. They feel that the Board did not hire sufficient aides nor plan adequately to properly supervise the children during the teachers relief period. They added that the teachers have cooperated with management in other student control problems. The students have been arriving earlier and the teachers have accepted and supervised them during what had been duty-free morning planning time. They have also given up some free time at lunch because the students lunch period was shortened. Finally, the Association notes that the elementary teachers have only a few minutes less teaching time than do the secondary teachers. Were the Board proposal to be adopted they would have nearly thirty minutes more in teaching time.

The fact finder is persuaded by the facts and the Association's argument that there is not a sufficient basis for changing the terms of the present agreement.

6. Sick Day Accrual

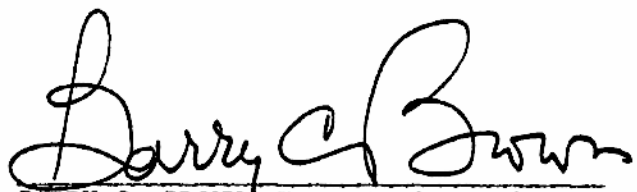
The Board would not change the present language of Article XII (A) which limits the accrual of sick leave to 138 days.

The Association proposes there be unlimited accrual of sick leave.

The evidence shows that the parties have previously consistently added twelve days to the maximum accrual figure under each new agreement. Comparable school districts often allow sick leave accrual up to one school year or 185 days. Therefore, a compromise position that seems appropriate here would be an enlargement of the maximum accrual figure to 150 days. This is more than the Board's status quo but far less than the Association's unlimited accrual.

RECOMMENDATIONS

The fact finder has determined the facts and made his recommendations in the foregoing. His reasons and explanations are a part of the above presentation. It is sincerely hoped that through this decision the parties will find resolution of the issues in dispute.



BARRY C. BROWN, Fact Finder and
Michigan Employment Relations Commission
Agent

March 11, 1976