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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding Between:

TRAVERSE BAY AREA INTERMEDIATE SCHOOL DISTRICT
and
TRAVERSE BAY AREA INTERMEDIATE SCHOOL DISTRICT EDUCATION ASSOCIATION/MEA/NEA

MERC Fact Finding Case No. G85-G-805
Kathleen R. Opperwall, Fact Finder

FACT FINDING REPORT

A fact finding hearing was held on February 6 and 7, 1986 at the offices of the Traverse Bay Area Intermediate School District at 2325 Garfield Road North, Traverse City, Michigan. The following persons appeared on behalf of the parties:

James T. Maatsch	Attorney for the Board
Richard Asiala	Superintendent, TBAISD
Barry J. Bourdo	Deputy Superintendent, TBAISD
Charles D. Mayer	Assistant Superintendent, S.E.
Jack Drew	Administrative Assistant, TBAISD
Arthur R. Przybylowicz	Attorney for the Association
Lyle Painter	MEA 15A UniServ Director
Sue Stepnitz	EA President, Bargaining Team
Van Collins	EA Bargaining Team
Nancy Fisher	EA Bargaining Team
Tim Coffey	EA Bargaining Team
Nancy Warszawski	EA Member Rep. P.T.

Traverse Bay Area Intermediate School District

At the time the case was referred for fact finding, there were still six issues in dispute, plus a question concerning the duration of the contract. At the beginning of the fact finding, the parties stipulated that duration was no longer an issue, since they agreed that the contract would have a 3-year duration. During the course of the fact finding, the parties reached agreement concerning Special Education preparation time. This left five issues, which will be considered in the following order:

1. Health insurance.
2. Salary.
3. Part-time personnel benefits.
4. Vocational Education preparation time.
5. Agency shop.

OVERVIEW

The Traverse Bay Area Intermediate School District (TBAISD) provides services to 16 local school districts in a five county area surrounding Traverse City. The district employs approximately 191 teachers, of which about 19 are part-time. The full-time equivalent is 177½. About two-thirds of these teachers are in the Special Education program. The other major program is Vocational Education. The district also has a General Education program and provides other services, particularly in the areas of learning materials and job training.

ISSUE 1: HEALTH INSURANCE

Most of the hearing time and most of the exhibits concerned the health insurance issue. The Board proposed as its Option I to provide health insurance, including dental and vision, through a self-funded plan. As its Option II, the Board proposed continuing with the current Michigan Education Special Services Association (MESSA) Super Med II health insurance (with BC/BS dental and MESSA vision), but not paying any premium increases over the premiums quoted on July 1, 1985. Option II was also coupled with a reduced salary proposal, which the Board had calculated to reflect what it expected to be the difference in expense between the self-funded plan and Option II.

The Association proposed that current insurance coverages be maintained. The current insurance is fully paid by the Board. The pertinent sections of the parties' current collective bargaining agreement read as follows:

"XIII.

E. Health Care Insurance

The Board shall pay health care insurance premiums as selected by the individual on the following basis:

1. MESSA - Full family Super Med II Plan, or optional benefits up to single subscriber cost, includes PPD Program.

2. BLUE CROSS/BLUE SHIELD - Comprehensive Hospital, Semi-Private. Riders: D45NM 2288, DCCR 2287, SA 244, IMB 2289, XF 627, MVF-1 Preferred Group Benefit Certificate 1879, Prescription Drug Group Benefit Certificate PD-87 (Zero Co-Pay), DC 4656, PD-EL 94, SD 4651,

FAE 4637, OB 1946, VST 4664, ML 1892, Reciprocity, XF 1991, Master Medical Supplemental Benefit Certificate 2004, MM-DED 2053, MM-AL 551, MM-M 2054, COB3-CB3 0540-5, MM-C 2055.

Coverage shall extend to the requirements of the professional employee up to and including family coverage, but dual family coverage for both husband and wife shall not be permitted.

F. Life Insurance

The Board shall provide for each employee within the bargaining unit a $5,000.00 group term life insurance policy with double indemnity and accidental death and dismemberment.

G. Dental

The Board shall provide, without cost to the employee, Blue Cross/Blue Shield Dental Care Plan III for all eligible employees of the bargaining unit and for their eligible dependents.

H. Vision

The Board shall provide, without cost to the employee, MESSA vision care Plan II to all employees and their eligible dependents."

<u>Review of Testimony on Insurance Issue:</u>

Deputy Superintendent Barry J. Bourdo testified that since October 1, 1983, all the employees of the TBAISD except the teachers have been covered under a self-funded insurance plan. These employees number 107 and include the administrators, secretaries, aides, and paraprofessionals. TBAISD obtained an excess insurance policy with both an individual stop loss and an aggregate limit. Mr. Bourdo testified that the individual stop loss was set at $15,000, and the aggregate was set at $196,177. For the 1985-86 school year, the individual stop loss had been increased to $20,000 and the aggregate had been reduced to $162,465. TBAISD paid $38,289 for the excess insurance for the 1984-85 school year. This amounted to 18.5% of total operating revenues for that year of $206,135 (Board Exhibit 10, Attachment 2). Mr. Bourdo explained that the revenues came from payments which the Board continued to make, based upon the 1983-84 Blue Cross/Blue Shield (BC/BS) premium amount. Exhibit 10, Attachment 2, shows that the fund had a slight operating loss for the 1984-85 school year, but that for the year and nine months ending June 30, 1985, the fund had total retained earnings of $37,209. This is just over 10% of the total operating revenues during this time period, which were based on the 1983-84 BC/BS rates.

Mr. Bourdo acknowledged that the self-funded plan for the teachers might have to be upgraded, since the MESSA Super Med II benefits appeared to be somewhat greater than the benefits currently provided by the fund to the non-teaching staff. Mr. Bourdo also explained that the dental program offered to the non-teaching staff through the fund had been improved from a 75-50-50 program to a 100-75-75 program because of the savings to the fund.

James Catton, a general education supervisor for the TBAISD, and chairperson of the self-funded insurance committee, also testified at the hearing. He testified that he reviewed monthly reports from the third-party administrator, Employee Benefit Associates (EBA), but that these monthly reports did not contain any diagnoses or prognoses. He also testified that a common reason why a claim was denied was that there had been a duplicate filing, where both the employee and the provider had filed a claim.

The Board also presented as a witness Mr. James Yantz, the business manager for the Clio area schools. He testified that his school district had saved half a million dollars since going self-funded starting on May 1, 1981. He testified that his board had upgraded the benefits for the teachers to current MESSA Super Med II levels.

Donald Vander Kuyl, an account executive with Employee Benefit Administrators (EBA), also testified on behalf of the Board. He testified that the benefits of MESSA Super Med II could be duplicated by his company if the benefits were described to them. He testified that EBA would use the Health Insurance Association of America (HIAA) formulas for calculating the "usual, customary and reasonable" (UCR) amounts payable to providers. He admitted that this UCR could be different than the UCR used by MESSA. He testified that EBA would require proof that MESSA used a higher UCR before EBA would apply a higher UCR. He acknowledged that, in his experience, neither MESSA nor BC/BS would give their UCR rates to third parties. As other witnesses testified, UCR rates are considered trade secrets by many insurance companies. Mr. Vander Kuyl did acknowledge on cross-examination that the teachers could end up paying somewhat more in out-of-pocket expenses, because the self-funded plan would not have the benefit of the preferred provider arrangement.

Five employees of the TBAISD who have been covered under the current self-funded plan testified that they had not had problems getting claims paid. These five were: Beverly Horton, payroll officer; Joan Moss, bookkeeping secretary; Caroline Christian, instructional aide; Meredith Lawhead, instructional aide; and Marion Keeder, secretary in the Special Education department. Several of these employees testified that, although there had been an excessive "lag time" on paying claims when Jackson, Long & Associates was the third-party administrator, this had been solved when EBA became the third-party administrator.

Doug Schroeder, a field representative for MESSA, testified on behalf of the TBAISD Education Association. He testified that MESSA considered its UCR figures to be a trade secret, and that MESSA would not disclose this information to other companies. He testified that MESSA's UCR figures were based on its own claims experience with its 65,000 members statewide. He testified that MESSA used the 90th percentile, within the same geographic area and specialty, to determine UCR. He gave examples of how the UCR for HIAA would be lower than the UCR used by MESSA. This would result, as he explained, in the individual employee paying more out-of-pocket expenses under a self-funded plan. He explained that MESSA had switched from health insurance underwritten by Equitable to health insurance underwritten by BC/BS. Because of this switch, teachers covered under MESSA health insurance would get the benefit of the preferred provider arrangement of BC/BS. Since a self-funded plan would not be able to use the BC/BS preferred provider arrangement, it would either have higher costs or lower benefits, per Mr. Schroeder's testimony.

Mr. Schroeder also testified that the MESSA Super Med II plan included many options which would not be available under a self-funded plan. These included a "laid-off benefit," which provided insurance without premium payments for up to 12 months if a teacher was laid off. Also, a teacher who terminated employment could continue coverage for 12 months by paying the same group rate, and then could continue coverage indefinitely upon payment of a higher rate.

MESSA also provided benefits mandated under state law, including substance abuse treatment, mental health treatment, hospice care, and coverage for chiropractors and podiatrists. As Mr. Schroeder testified, the MESSA plan also permitted teachers who had other health coverage to purchase options, such as long-term disability coverage or better dental coverage. He testified that 56 members of the Association were paying for such options themselves, in addition to the coverage paid for by the Board. He testified that these options would not be available from MESSA if the TBAISD went to a self-funded plan for its primary insurance.

John Salow testified on behalf of the Association concerning the BC/BS dental insurance which is in effect under the current contract. On cross-examination, Mr. Salow acknowledged that the dental plan could be duplicated by another company.

Dan Sperry, a senior officer with Pension & Group Services, Inc. in Kalamazoo, also testified on behalf of the Association. His company is a consultant to MESSA. He testified that the MESSA benefits could not be duplicated without a copy of the MESSA administrative procedures manual, which is some six to eight inches thick. He testified that a self-funded plan would not have a problem continuing to cover retirees, and it should be able to obtain insurance for terminated employees for up to one year. He testified that it would be very hard to find coverage for terminated employees which extended beyond a year. Mr. Sperry testified that a self-funded plan could make gradual changes in the benefits. On cross-examination, he acknowledged that an insurance company, such as MESSA, could also make gradual changes, such as changing the UCR level, without notifying the employees.

Mr. Sperry testified that his company was able to obtain a 10% or 11% savings by enforcing coordination of benefit provisions. He explained that BC/BS, in contrast, had a policy of "pay and pursue," under which they only obtain about .4%

savings on coordination of benefits.

John Artman, a teacher with the West Branch-Rose City area schools testified that after they switched to a self-funded plan, there were problems with both the automobile carrier and the excess loss carrier denying coverage and claiming that the other was responsible. He also testified that their experience was that it was hard to reach their TPA. He also testified that although the plan was supposed to protect the teachers' privacy, charges from the local hospital emergency room went directly to the high school.

The Association also expressed concern that the self-funded plan might actually lose money, and then it would be difficult for the Board to go back to an insured program. The Board expressed its unhappiness with the fact that it could not obtain a copy of the MESSA master contract, although the Board was paying the premiums for the coverage. The Board also pointed out that MESSA and the Michigan Education Association have interlocking boards of directors and have the same executive director.

Findings on Insurance Issue:

I am persuaded that some savings could be achieved by going with a self-funded plan. The Board's experience with its other employees points to a savings in the 10% range. Since health, dental and vision insurance amount to over 8% of the teachers' total compensation, a savings in this area could be substantial.

MESSA was able to achieve about a 12% reduction in its premiums by switching from Equitable to BC/BS with its preferred provider arrangement. The full family rate for MESSA for 1985-86 was $221.20, compared with $249.80 for 1984-85 with Equitable. MESSA also achieved some savings by switching its vision program over to Vision Service Plan (VSP) of Columbus, Ohio.

The testimony also indicated that individual employees could end up paying more out-of-pocket expenses under a self-funded plan. This would occur because the BC/BS preferred provider arrangement would not be available to a self-funded plan.

Although a self-funded plan could not exactly duplicate the benefits provided by MESSA without MESSA's cooperation, a self-funded plan could put together a package which provided basically the same benefits. One benefit which most likely could not be duplicated is the continuing coverage for terminated employees (at the expense of the ex-employee). It may not be fair to expect the Board to duplicate this benefit, since it extends well beyond the employment relationship. A self-funded plan could provide continuing coverage for retirees.

A self-funded plan might be less stable than MESSA. The TBAISD self-funded plan currently in effect has already changed its third-party administrator once. The Clio school district also had to change its third-party administrator because its original TPA stopped doing business in Michigan. The TBAISD self-funded plan changed its excess loss carrier, per the testimony. On the other hand, MESSA has changed from Equitable to BC/BS on its health insurance and also changed the TPA on its vision coverage.

Teachers would have somewhat less assurance of privacy under a self-funded plan. As the plan sponsor, the TBAISD would have a right to information concerning claims. In order to pursue an appeal, an employee might feel that further information had to be given. Although the privacy problem could be kept to a minimum, this is a legitimate area of concern.

Recommendation:

It is my recommendation that current insurance coverages through MESSA and BC/BS be maintained, but that premiums be subject to the same annual percentage increases as salaries are. Basically, my reasons for recommending this are as follows: Both parties have legitimate concerns. The Board wishes to contain cost increases and the Association wishes to continue MESSA benefits which are well-tailored to the needs of teachers. My recommendation would permit the teachers to continue with the insurer of their choice, but would place a cap on the increase in premiums payable by the Board.

ISSUE 2: SALARIES

The Board offered two salary options. Option I was to go with self-funded insurance and have salary increases of 5% for

1985-86, 5.5% for 1986-87, and 5% for 1987-88. The second option was to continue with the current health insurance, but capped at the 1985-86 premium rates, and have salary increases of 4.1% for 1985-86, 4.64% for 1986-87, and 4.19% for 1987-88. The difference between the salary percentages in the two options was based upon the Board's calculation of the savings from switching to self-funded health insurance.

The Association proposed salary increases of 6% for each of the three years of the contract.

The salary proposals of both parties were for salary increases on the steps. The Board calculated that the overall salary increase would actually be several percentage points higher, because many of the teachers are still moving up the steps. The TBAISD has 12 steps to its salary schedule, plus three levels of longevity payments. A large portion of the teachers in the TBAISD are at or near the top of the steps, and a large percentage have advanced degrees or course work. Specifically, 19 teachers have a B.A. only; 52.8 have a B.A. plus 18 credits; 82.1 have a M.A.; 7.61 have a M.A. plus 15 credits; and 16 have a M.A. plus 30 credits.

Board Exhibit 4 showed that for 1985-86 the average increase for constituent school districts within the TBAISD was 4.47%. Association Exhibit S-9B showed that for intermediate school districts statewide, the average increase for 1985-86 was 5.37%, and for 1986-87 the average increase was 5.54%. On a state-wide level, the TBAISD salaries are in the lower half. Compared to its own constituent school districts, the TBAISD salaries have been at or near the top for those with Masters Degrees. (See, for example, Board Exhibit 5A.) Board Exhibit 5A shows that the TBAISD salaries for teachers at the M.A. step 12 and M.A. max would be at the top for the three years of this contract, whether the increase given is 4.1% or 5% or 6%. This data is not complete for all the school districts for 1986, or particularly for 1987.

Association Exhibits S-19 through S-23 show that over the last four years the state equalized value for the intermediate school district has grown by 22.6%, or 5.65% per year on the average.

Recommendation:

It is my recommendation that a 5% increase on the steps be given for each of the three years of the collective bargaining agreement. This would be slightly more than the average increase for the area, but slightly less than the average increase for all intermediate school districts in the state. The growth in assessed value in the TBAISD would support an increase at this level.

My recommendation on Issue 1 regarding health, dental and vision insurance, would tie in with this salary increase as follows: If premiums for the insurance coverages increase by more than 5% over the previous year, then the Association may advise the Board of its choice of how to modify the coverages to keep the increase within 5%. If the Association does not choose such a modification, then the salary increase on the steps would be reduced by the amount of the insurance increase in excess of 5%. In calculating the increase, changes in status of employees (such as adding dependents) would not be counted, but the increase for the same status would be counted.

The MESSA Super Med II rates for 1985-86 used at the hearing would be the starting point for the 1985-86 year.

ISSUE 3: PART-TIME PERSONNEL BENEFITS

The current contract provides part-time employees with prorated health insurance, but does not provide them with dental or vision insurance. The Association proposed that all insurance would be prorated for part-time employees. The Board proposed under Option I that the current coverage be maintained (i.e. prorated health only) and under Option II proposed that employees who worked at least 30 hours per week would be eligible for dental and vision.

Under the current contract, vision coverage is provided through MESSA and dental coverage is provided through BC/BS. As shown by Association Exhibit P-18, the cost for full-time current coverage for dental is $32.11 per month and the cost for vision is $12.69 per month, for a total of $44.80 per month. The

Association proposed on Exhibit P-18 a reduced form of coverage for both vision and dental which would result in a total of $25.61 per month. The Board objected at the hearing that this specific proposal had not been made before.

Exhibits P-19 and P-20 show that if the part-time dental and vision were provided through MESSA, then all the part-time employees would have to participate. If the premiums were simply prorated so the employee paid half and the Board payed half, then some employees might not wish to participate.

At the hearing, the Association also proposed that part-time employees move up one-half step for each year worked instead of having to work two years before moving up a step. The Board objected that this proposal had never been presented during bargaining.

Recommendation:

I recommend that the Board make available to part-time employees an amount equal to the prorated vision and dental benefits, which amount can be applied toward dental, vision, or health or optional insurance provided through MESSA. This would be somewhat similar to how the Board now handles the second spouse where both husband and wife work for the TBAISD. If MESSA did not offer any options which came out at the right dollar figure, then the employee would have the choice of either paying the rest of the premium, or simply not using some or all of the amount. By my calculations, the prorated vision and dental should be approximately $22.00 per month for teachers working half time. My reasoning is that part-time employees should receive proportionately the same benefits as full-time employees, but not if it means that the Board has to maintain a second set of health, dental and vision insurance programs. To the extent that the prorated amount can be made available without causing undue administrative problems, I recommend that this be done.

I do not recommend that part-time employees be advanced one-half step for each year. Basically, I think this would be getting too complicated. Also, full-time employees do not move up a half step when half the school year is completed.

ISSUE 4: VOCATIONAL EDUCATION PREPARATION TIME

The Board proposed new language for Article 11, Section A, subsection 2, which would limit preparation time for the Voc Tech and Special Ed teachers to 150 minutes per week, which would be one-half hour per day on the average. The Association proposed new language for this section which would limit student contact time at the Career Tech Center to 300 minutes per day and would provide for preparation time at the Career Tech Center of at least 60 minutes per day. The parties' current contract recognizes that "because of the diverse needs of the student enrollment and the instructional responsibilities of the school district, a uniform school day and conditions for all professional employees is neither obtainable nor desirable."

The Board stated at the hearing and in its brief that it wished to have the result set aside of an arbitration case decided in 1984. In that case, arbitrator Nathan Lipson had concluded that certain Vocational Education teachers were entitled to additional compensation for hours they worked in a pilot project which preceded their usual morning class. The Board in particular wanted flexibility to schedule pilot projects in the future.

The daily work schedule at the Career Tech Center has been different from that in regular K-12 schools, at least for the last several years. Association Exhibit PT-3 shows a daily schedule with a morning class from 9:30 a.m. to noon and an afternoon class from 12:30 p.m. to 3:00 p.m. The hour from 8:30 a.m. to 9:30 a.m. is listed for "class preparation, meetings, etc." The time from 3:00 p.m. to 3:15 p.m. is listed for "class-review of days' activities;" the time from 3:15 p.m. to 3:35 p.m. is listed as "preparation and/or staff development." This daily schedule shows a total of five hours of class time, and one hour of preparation time, plus some additional time at the end of the day.

Board Exhibit 13 showed the schedules for certain K-12 schools in the area. A review of this exhibit shows that most of the districts provide five periods per week, or an average of one per day, for preparation time. Association Exhibit PT-5 shows that most of the area school districts have five class periods for student contact time per day. From this, I conclude that the present schedule at the Career Tech Center is basically the same as what prevails in the area: five hours of class time and one hour of preparation time per day on the average.

Testimony was presented at the hearing that the Career Tech teachers need, if anything, more preparation time than regular teachers, rather than less. This is true for those who take in work from the public, have to obtain materials, and therefore operate in some ways like a small business.

[The parties stipulated as to language for Special Education preparation time. For the stipulation, the parties agreed that the Board's language, as follows, could be included in that portion of the contract:

> "Special Education teachers will work out the schedule with their immediate supervisors, it being understood that some of the preparation may be in the classroom while students are present but under the supervision of an aide."

The preparation time for Special Education teachers is therefore not an issue subject to recommendation at this point.]

<u>Recommendation:</u>

For the Vocational Education preparation time, I recommend that the current schedule of 25 hours per week class time and five hours per week preparation time be maintained. This would be in keeping with the usual school schedule of one hour of preparation time per day and five hours of class time per day. I also recommend that the Board be given some flexibility to change the daily schedule so long as the weekly hours are maintained.

ISSUE 5: AGENCY SHOP

The Association proposed adding an agency shop provision. The Board proposed maintaining the present language, which does not have an agency shop provision.

Nancy Fisher testified on behalf of the Association that the Board had an agency shop clause in its contract with its AFSCME unit. She also testified that of the 191 employees in the education association unit, only 121 were members of the Association. The other 70 did not pay Association dues, which amounted to $850.65 over the previous three years. The Association exhibit showed that 81% of the school districts in regions 14 and 15 had agency shop provisions. The percentage for intermediate school districts with bargaining agents was 84%, and for all K-12 and intermediate school districts, it was 90% with agency shop clauses.

The Board pointed out that the language proposed by the Association did not contain a save harmless clause. In contrast, the agency shop provision adopted for teachers' aides, which is Association Exhibit A-3, does have a clause in which the union agreed to indemnify and save the Board harmless. The agency shop clause for the teachers aide contract also had a "grandfather clause" which exempted present members of the bargaining unit.

The Association emphasized that it had a duty to represent all members of the bargaining unit, whether or not they joined the Association, and that it was only fair that all be required to contribute.

Recommendation:

I am not recommending that an agency shop clause be adopted at this time. Although the Association has made some persuasive arguments, I think the Board has raised some legitimate concerns and it would be preferable for the parties to freely negotiate an agency shop clause which both can live with. This issue is not as amenable to fact finding as are the compensation issues which are more usually addressed. It is difficult on this issue to reduce the concerns of both parties and determine the facts, since the issue is more one of basic philosophy than of particular facts. For this reason, I am recommending that the parties continue with their present language and negotiate this issue again at a future date.

SUMMARY OF RECOMMENDATIONS

1. **Health Insurance:** Maintain the present health insurance, but limit the premium increases to five percent (5%) per year.

2. **Salary:** Five percent (5%) on the steps for each of the

three (3) years.

3. **Part-Time Personnel Benefits:** Make a prorated amount available to part-time employees through MESSA, but do not establish separate benefit programs.

4. **Vocational Education Preparation Time:** Adopt a weekly schedule which provides, on the average, five (5) classroom contact hours and one (1) preparation hour per day.

5. **Agency Shop:** Maintain current language.

Kathleen R. Opperwall
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Fact Finder

DATE: March 31, 1986

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