1797

REPORT OF FACT FINDER
APPOINTED BY THE EMPLOYMENT RELATIONS COMMISSION
OF THE STATE OF MICHIGAN

BUREAU OF EMPLOYMENT RELATIONS
State of Michigan Plaza Building
14th Floor 1200 Sixth Avenue
Detroit, MI 48226

In the Matter of:

MERC Case No. L97 H-4015

BENDLE PUBLIC SCHOOLS

APPEARANCES

For the Employer:
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WITNESSES

FOR THE ASSOCIATION

Richard Long, Uniserv Director
Richard Slagter, Uniserv Director
Ann Drury, Vice-President Traverse City Education Association
John Clement, William M. Mercer Company
Sarah Miller, Director of Marketing MESSA
Steve Fox, President Bendle Education Assosiation

FOR THE EMPLOYER

John Angle, Superintendent of Bendle Schools
Jeff Dickema, Vice President for Sales MEBS
James Bleau, Assistant Superintendent for Personnel & Bus Services, Swaretz Creek Community Schools
Bill Parrish, Principal, Bendle High School

EXHIBITS

JOINT

1. Tentative agreement of July 28, 1997
2. Tentative agreement of 11/18/97 with all amendments
   a. Tentative agreement 11/18/97 on open issues only
3. Tentative agreement of 1/10/98
   a. Tentative agreement of 1/10/97 on open issues only
4. Bendle Schools Audit for Year Ended June 30, 1997
5. Bendle Schools Audit for Year Ende3d June 30, 1998

FOR THE ASSOCIATION

1. Court of Appeals decision : City of Roseville v Local No. 1614, IAFF, AFL-CIO, 53 Mich. App. 547 (1974)
2. Court of Appeals decision: Detroit Police Officers Association v City of Detroit, 142 Mich. App.248 (1985)
3. Contract between the parties expiring in 1997
4. Insurance comparables
5. Union proposal #2 of 06/21/99 at 5:23 p.m.
6. Union proposal of 08/30/99
7. Employer counter proposal of 08/30/99
8. TCAPS survey
9. 1999 Insurance survey
10. Correspondence from Plante Moran, LLC
11. Comparison between actual and projected costs in Traverse City
12. Comparison of costs between 11/97 and 10/99 in Traverse City
13. Actual distributed expenses for TCAPS
14. MESSA Tri-Med Certificate booklet
15. MEBS booklet (Bendle Health Plan)
16. MESSA Delta Dental Plan
17. MEBS Dental Plan
18. MESSA vision plan
19. MEBS vision plan
20. Association's first salary and insurance proposal from new bargaining team on 05/28/98
21. Employer package proposal of 07/14/98
22. Union proposal of 04/15/99
23. Tentative agreement of 09/29/99
24. Salary comparables
25. Salary definitions 1 thru 9 for Athletic League and contiguous districts
26. Purchasing Power analysis
27. Staff counts

28. Financial data relating to Operating Expenses and Revenue
29. 99/00 State aid status report
30. 98/99 State aid status report
31. 97/98 State aid status report
32. 96/97State aid status report
33. 95/96 State aid status report
34. 94/95 State aid status report
35. Form B instructions
36. Bendle Schools Audit of 6/30/99
37. Foundation Allowance Distribution Formula
38. Governor's Executive Budget Recommendation for Per Pupil Foundation Allowances, 2000-01,2001-02,2002-03
39. Senate recommendation for Per Pupil Foundation Allowances, 2000-01, 2001-02, 2002-03
40. GISD Teacher Salary Percentage Increases
41. Calendar for comparables

FOR THE EMPLOYER

1. MESSA Super Care I Certificate booklet
2. LASIK memo from MEA
3. Traverse City Schools expense report
4. FOIA request from MEA
5. Births for Genesee County
6. 25 Year enrollment comparison & 5 year enrollment projections
7. Special Education Enrollment
8. Adult and Alternative Education Enrollment
9. Student Head Count in Genessee Area Conference
10. Foundation Grants for Comparable Districts
11. Revenue Impact Based on Enrollment
12. Bendle Public Schools Teacher Employee Benefits Cost Comparison
13. Actual Benefit Costs of Administration, Secretaries, Custodians and Bus Drivers

IN THE MATTER OF FACT FINDING

between

BENDLE PUBLIC SCHOOLS

and

BENDLE EDUCATION ASSOCIATION/MEA

MERC Case No. L97 H-4015

REPORT OF THE FACT FINDER

BACKGROUND

These fact finding proceedings were initiated pursuant to MCLA 423.10(d)(2)11 (1) which posits that "matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known". American Federation of State, County and Municipal Employees, Council 25 v Wayne County, 152 Mich App 87, 96 (1986). The labor agreement between the parties expired June 30, 1997 and the parties conducted numerous negotiating sessions commencing June 16, 1997 for the purpose of determining a successor agreement. The parties began negotiations with the understanding that everything discussed would be so between the negotiating teams at the table in a collaborative approach. On July 28, 1997 the negotiating teams reached a tentative agreement (see Joint Exhibit #1) on all open issues and the Association Bargaining Team reported to the membership. This tentative agreement was ultimately rejected by the bargaining unit membership.

Both parties then agreed to request the assistance of a mediator from the Michigan Bureau

of Employment Relations. As a result of this assistance, the parties reached another tentative agreement on November 17, 1997(see Joint Exhibits 2 and 2a) which again was reported to the Association Membership. After reviewing and discussing this tentative agreement the membership again decided to reject it and send their bargaining team back to the negotiating table. A third tentative agreement (see Joint Exhibits 3 and 3a) was reached between the parties on January 10, 1998 which was once again rejected by the Association membership.

No further negotiations were immediately scheduled by the parties. On March 24, 1998 the Association sent notification to Superintendent of Schools John Angle that a new negotiating team had been elected to represent it in future negotiations. It should be noted that the make-up of the Employer's negotiating team changed as the chief spokesperson was replaced by another representative from the Michigan Association of School Boards in September of 1997 who in turn was replaced by still another consultant in August 1998.

After the rejection of the third tentative agreement and a change in the Association Bargaining Team the parties returned to the table on May 11, 1998 with salary and benefits being the main issues. Not only had the negotiating teams changed but the method of negotiating also changed. The collaborative method was dropped and a more traditional method of negotiating was utilized, in that the Superintendent was no longer at the table but in the building being available for consultation.

On August 23, 1998 the Association brought to the table two (2) representatives from M.E.S.S.A. to discuss the open issue of health insurance. In that the Employer did not receive pre-notification of the representatives from M.E.S.S.A. the session was canceled and re-scheduled for August 27, 1998. At this August 28 meeting the third and final chief spokesperson for the Employer

was introduced. It was at this time also the Employer informed the Association pursuant to MCLA 423.215(3)(a) the issue of who would be the policy holder for hospitalization would not be a subject of negotiations. At this time the Employer insisted that it would be the policy holder for future hospitalization insurance contracts. It should be noted that prior to this date the parties had been negotiating for fourteen (14) months and this condition had never been previously imposed. In fact, in all three (3) previous tentative agreements various hospitalization insurance proposals from the Employer included plans from M.E.S.S.A. and Community Blues from Blue Cross Blue Shield of Michigan. The Employer had, however, tied all of its insurance proposals to the wage increases to be received by the Association membership.

The relationship between the parties after this point apparently became very strained as Unfair Labor Practice Charges were filed against the Employer by the Association and intervention was requested through the Genesee County Circuit Court. At the same time the parties continued to meet at the bargaining table and used the assistance of a State Mediator. During one of the mediation sessions the Employer representatives did notify the Association bargaining Team that in an attempt to settle some of the open issues the Employer would no longer tie-bar issues.

Ultimately on August 30, 1998 the Association petitioned for fact finding through the Bureau of Employment Relations, said petition bringing about these proceedings. In its Post-hearing Brief the Employer raised an objection to this proceeding and stated that the application and the initiation of this fact finding was deficient under R 423.432 Contents of applications Rule 32 (e) "*A statement that the applicant has attempted to engage in good faith collective bargaining and mediation, and that the parties have not succeeded in resolving the matters in dispute.*" It should be noted that at no time prior to the commencement of the Hearing, either at the Pre-hearing or on the first day and

thereafter, did the Employer raise any objections to the proceedings. Additionally, at the Pre-Hearing the Employer stated it did not file an answer to the petition for fact finding as required by R 423.433.

CRITERIA

Fact Finders are appointed and commissioned to ascertain the facts surrounding a dispute and apply recognized criteria to make a recommendation as to the collective bargaining agreement being negotiated by the parties. In nearly every collective bargaining situation, three (3) essential economic criteria are involved:

1. A comparison with other similarly situated employers and employees (market comparison)
2. Comparison to economic conditions (economic comparison)
3. The employer's ability to pay.

These economic criteria are important as the collective bargaining agreement, as well as the employer and the employees, are influenced by the economics of the market place.

In non-economic matters, a fourth criteria mandates the Fact Finder to make fair and reasonable recommendations which accommodate the parties particular situation and which will assist to bring about a voluntary, friendly and expeditious adjustment and settlement of the differences that separated the parties and negated the possibilities of a settlement. These recommendations must be fair, legal and workable within accepted and established collective bargaining practices between employers and the legally recognized exclusive bargaining agent of the employees.

The parties submitted evidence and argument, and this Fact Finder made inquiry into the

essential facts of the collective bargaining relationship between the parties, and within the criteria outlined above, makes his recommendations.

MARKET AND ECONOMIC COMPARISON

Market Comparison is one of the most significant criteria affecting negotiations in this instance. Given current economic conditions and labor markets, the State and the nation are experiencing a long sustained period wherein wages exceed the Cost of Living. In this case wage proposals have mirrored this situation. It would be imprudent, however, for the Employer to lose ground in the market place and therefore market conditions and economic conditions will weigh heavily in this Fact Finder's recommendations.

Prior to the beginning of the hearings the parties discussed what exactly would be considered in determining how to develop a fair settlement. It was accepted by the parties that the Employer would most likely have to compete with contiguous school districts however, in the attempt to decide what comparable employees receive in the area of benefits and working conditions it was also decided to utilize school districts in the same athletic league in which the Employer participates.

Additional information would be accepted regarding internal comparability in relation to other employee groups with the Employer.

Exhibits prepared and presented by the Association at the Hearing were done so based on the Pre-Hearing discussions and agreement. During the Hearing, however, the Association presented facts relating to the experience of the Traverse City School District in relation to the hospitalization insurance in effect at that location. Although Traverse City does not fall within the

guidelines of comparability discussed at Pre-Hearing this Fact Finder allowed the information as an argument against the type of insurance offered by the Employer, not as a factual comparable. The Association's Post-Hearing presented arguments based on those exhibits.

The Employer's exhibits prepared and presented at the Hearing also were based on the guidelines discussed and agreed to at the Pre-Hearing. In its Post-Hearing Brief the Employer argues that "the only comparable that 'truly' matches the Bendle Public Schools are the five (5) internal comparisons". The Employer bases this rationale on Section (9)(d)(e) of Act 312, P.A. 1969, as amended, this being the binding arbitration law for police, fire and emergency personnel. In that this Hearing was conducted under Act 336, P.A. 1947, as amended, and the parties prior to the hearing agreed to what would be the criteria for comparability this Fact Finder will use that criteria for his recommendations.

It is also important to note, that this Fact Finder believes the Employer is subjected to pressures caused by the level of benefits it provides its employees in comparison to contiguous school districts. Employees are more likely to change positions and the Employer's ability to recruit qualified employees are affected by those benefits.

The Association provided evidence, (Union Exhibit 26), that examined the purchasing power of the teachers at Bendle in comparison to the comparables. The evidence shows that only two (2) groups of teachers experienced a lower purchasing power, Bendle being one of them. This evidence was not challenged by the Employer.

The Employer on the other hand argued that its ability to manage its financial affairs was paramount in its ability to remain financially viable, though it did not argue an inability to pay. It

also argues that internal consistency is important and needs to be recognized.

In determining a "fair and equitable" recommendation, this Fact Finder considered all of the above criteria and factors. This Fact Finder feels it necessary to provide a recommendation that will allow the Employer to at least maintain a level of financial stability that was enjoyed prior to these proceedings and a recommendation that will allow the teachers of Bendle to maintain a level of purchasing power that will not be further eroded.

ISSUES

INSURANCE

It is universally accepted that health insurance is one of, if not the, most expensive fringe benefits provided employees. In years past this benefit was not the concern of the parties as it is today. It is uncontroverted that our economy is in a time of high health insurance coverages. The cost of providing health insurance, and paying for them, is a large part of any employers' expenses. Solutions available to employers in unionized arenas are few and far between. Carriers can be changed; benefits can be changed; co-pays and deductibles can be increased; or employees can shoulder part of the costs. This all requires negotiations between the employer and the union. At non-unionized employers the solutions are simple; changes can be made by the employer on a whim.

Employees have an equal concern in the area of health insurance. Coverages they have enjoyed in the past have provided a safety net for them and their families in the area of health care. In face of rising costs for doctor's care, medical prescriptions and hospital care, employees with employer provided health insurance coverage have not had to be concerned about the rising costs. When these costs are absorbed by the employer, the employees have received an automatic increase

in a fringe benefit that is most cases was not directly tied to a wage increase. Employees have, however, paid for this benefit because as employers' costs in this area rise less money is available for other benefits such as wage increases. So while one concern of employees is answered, another is raised as their quality of life may remain stagnant as their income fails to rise in relation to the cost of living.

All of the above cited concerns of the parties are the cause of conflict at the time of negotiations. Employers become focused on reducing costs and employees focus on retaining their safety net in the health arena. Resolution of this conflict can only be achieved if employers and employees work together and realize each other's concerns. Employers must provide the best coverage possible for their employees within the confines of the finances available and employees must realize their previous first dollar coverage is no longer viable.

In this case the Employer attempted to reduce its costs in the health insurance area by first proposing a change in carriers that provided a lower cost and then by contracting the insurance through a brokerage and becoming partially self-funded.

On June 16, 1997 representatives of the Bendle School Board and the Bendle Education Association commenced negotiations regarding certain items contained in the labor agreement scheduled to expire June 30, 1997. At the beginning the parties utilized the collaborative approach to negotiations with everything done at the table. At this time the representatives of the Employer advised they were concerned about two (2) items; (1) student achievement levels and, (2) cost containment relating to long term savings.

On July 28, 1997 a table agreement was reached by the parties on all items previously discussed. (Joint Exhibit #1) Contained in this table agreement was a section relating to the levels

of health insurance coverage for the teachers and the carrier, that being MESSA. Subsequently, this table agreement was rejected by the Association membership and the parties returned to the table for further negotiations.

In September of 1997 the parties, with the assistance of a mediator assigned by the State, again attained a table agreement regarding all of the issues. (Joint Exhibit #2) This table agreement contained language relating to hospitalization insurance that mirrored the language in the previous agreement (Union Exhibit #3) as it related to the fundamental coverages.

It is apparent that at this time the Employer did not have an objection to the insurance coverage or carrier being proposed by the Union as it agreed to continue the fundamental coverage from the previous labor agreement, albeit that continuation being tied to wage increases.

In November 1997 the membership of the Association again rejected the table agreement negotiated by their representatives which in turn caused the parties to return to the table for further negotiations. During the next phase of negotiations, due to the need on the part of the Employer to contain rising costs in the health insurance area, the parties discussed alternatives to M.E.S.S.A.. On January 10, 1998 a third table agreement was negotiated with a change in insurance from M.E.S.S.A. to Community Blue, the new carrier proposed by the Employer. As with the other two (2) table agreements, this third agreement was rejected by the Association membership.

It should be noted that testimony was not presented at the Hearing as to the actual reasons all three (3) table agreements were rejected by the Association membership. Although it was alluded that wage increases proposed by the Employer and accepted by the Association representatives were less than acceptable and tied to the hospitalization coverage. After the third rejection the negotiating team for the Union was replaced and new representatives took up the

challenge.

Up to this point it is clear from the agreements reached by the parties that the Employer was comfortable with the previous insurance provider and the Union was not willing to sacrifice health care coverage levels. It is also clear that the Employer was making every attempt to contain costs without causing undue hardship for the employees in the area of health care.

In light of this premise of savings cost and in light of a proposed double digit increase of thirty-four percent (34%) in the coverage from Community Blue, the proposal presented by the Employer and contained in the third table agreement (Joint Exhibit #3) was withdrawn by the Employer.

In August of 1998, after a complete change in the negotiating teams for both parties in the preceding months, the Employer raised an objection to MESSA insurance coverage and any other insurance coverage that did not allow the Employer to be the policyholder. This new idea on the part of the Employer was based on MCLA 423.215 Sec.15 (3)(a)(4) which states:

> "(3) Collective bargaining between a public school employer and a bargaining representative of its employees shall not include any of the following subjects:
>
> (a) Who is or who will be the policyholder of an employee group insurance benefit. This subdivision does not affect the duty to bargain with respect to types and levels of benefits and coverage for group insurance. A change or proposed change in a type or to a level of benefit, policy specification, or coverage for employee group insurance shall be bargained by the public school employer and the bargaining representative before the change may take effect."
>
> "(4) The matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees, and, for the purpose of this act, are within the sole authority of the public school employer to decide."

Based on the above, the Employer did not consider any proposal from the Union regarding

a hospitalization insurance vendor that did not allow the Employer to be the policy holder.

Conversely, the Union argues the same section of the law requires the Employer to negotiate who will be the insurance carrier; the level and scope of insurance benefits; and, the coverage and administration of an employee health benefit plan, pursuant to *City of Roseville v Local No. 1614, IAFF*, 53 Mich App 547, 220 NW2nd 147 (1947), (Union Exhibit #1), and *Detroit Police Officers Association v Detroit*, 142 Mich App 248, 369 NW2nd480 (1985). (Union Exhibit #2)

As noted earlier, testimony and evidence revealed that the Employer did not raise the specter of policyholder until more than a year after the commencement of negotiations between the parties and after three (3) table agreements which did not include the question of policyholder. Bill Parish, Bendle High School Principal and a member of the Employer's bargaining team, after the failed table agreements, testified that this issue did not become part of the Employer's position until August 27, 1998 when it was first mentioned in a mediation meeting attended by representatives of M.E.S.S.A. UniServ Director Richard Long's uncontested testimony revealed the aspect of who would be policyholder became the main obstacle to a negotiated settlement during an informal negotiation settlement discussion before a State of Michigan Administrative Law Judge one (1) year later.

Under the guise of demanding to be the policyholder. the Employer proposed a health insurance package to be administered by M.E.B.S. and hereinafter referred to as the Bendle Health Care Plan. Testimony at the hearing provided information that this plan is already in effect for administrators, clerical staff, bus drivers, maintenance staff and adult education teachers.

The Union objected to the proposed Bendle Health Care Plan for two (2) main reasons. First, as uncontested testimony pointed out, the plan did not provide the same level of benefits as proposed

by the Union. (Union Exhibits 14,15, 16, 17, 18 & 19) Second, the service aspect of the Bendle Health Care Plan appears to be flawed and cumbersome. Under the Bendle Health Care Plan, M.E.B.S., through various underwriting carriers, would administer the benefits but the plan would be self-funded through the Employer. Under this type of plan, benefits would not be paid unless and until the Employer paid the cost. (Union Exhibit 15 page 25; Union Exhibit 17 page 23; and Union Exhibit 19 pages 15-16) With this aspect in mind the Union voiced concern about its members facing financial liability for incurred and unpaid costs under the plan.

Witnesses from the Traverse City Education Association testified regarding the innumerable problems encountered when the Traverse City School Board engaged MEBS in November 1997 after negotiations with the Traverse City Education Association. Richard Slagter, MEA UniServ Director for Traverse City Schools, testified that the local association accepted MEBS after fact finding case there providing the following three (3) conditions were met: (1) there would be an insurance monitoring committee to monitor benefits, (20 no administrator would get confidential information from MEBS, and (3) the benefit levels would have to be exactly the same as the M.E.S.S.A. Super Care 1 program. Further testimony pointed out that numerous complaints, one hundred fifty to be exact, were submitted to the monitoring committee, all of which were settled in-house with the employer. Additionally, testimony revealed that the initial projected costs savings never materialized and in fact, the cost to the Traverse City Schools was higher. In subsequent negotiations the parties in Traverse City agreed to change from M.E.B.S. back to M.E.S.S.A.. It should be noted that the Traverse City Schools had an employee population of over six hundred (600) teachers.

In rebuttal, the Employer provided testimony from Assistant Superintendent Jim Bleau, from

the Swartz Creek School District, a district comparable to Bendle. Mr. Bleau testified that the Swartz Creek School District negotiated with the Swartz Creek Education Association a change from MESSA to MEBS. This change resulted in substantial savings to the Swartz Creek School District and came about without any major problems.

(It should be noted that this Fact Finder allowed testimony from the Traverse City representatives for information purposes only as it related to the service aspect of MEBS. Traverse City was not accepted by the parties or this Fact Finder as a true comparable for Bendle.)

The Employer's entire premise throughout these proceeding on health insurance was that of saving money and fiducial responsibility to the taxpayers of the Bendle School District. Part of the Employer's argument against MESSA was its method of determining premium costs. As with most insurance providers MESSA pools Bendle's utilization experience with other employers and determines the premium costs. Mr. Angle testified that this method was unacceptable to the Employer as it did not show the true costs of providing health care insurance for its employees. Under the Bendle Health Care Plan the true costs to the Employer would be more readily available as it would be self-insured and responsible for the costs. In this manner it was more easily explained to the taxpayers that their dollars were paying for the cost of administration of the Bendle School District and not being used to subsidize another school district in the area of health care. By being the policyholder meaningful efforts towards cost containment could be achieved.

Testimony from John Clement, health care consultant for the William M. Mercer Company, was contrary to that of Mr. Angle's. Mr. Clement testified that major medical wrap programs, such as the Bendle Health Care Plan, should only be instituted by employers that are large enough to cover the extra cost caused by the fluctuation of claims over a period of time. Further testimony

from Mr. Clement explained the "pooling" aspect of health insurance. This "pooling", or the experience rating over large a group of insured, allows for the leveling of premiums. While it is true in some cases an employer might be subsidizing another, conversely another employer might be subsidizing the first. This is a commonly used method in the insurance industry.

Mr. Clement further testified that he was called as a witness in the Traverse City case and provided basically the same opinion as in this case. Savings through a medical wrap program are illusionary as the administrative costs through this type of program, approximately seven cents ($.07) of every dollar, would most likely increase with an influx of claims adjudication.

In its Post-Hearing Brief the Employer argues that he savings projected in the Bendle Health care Plan would support wage increases outlined in Union Exhibit #7. In testimony at the Hearing Mr.Angle testified that the Employer's last offer did not tie-bar wage increases to a change in health care insurance and in fact at one point in time the Employer implemented its offer prior to any changes in health care. With that in mind, this Fact Finder did not take into account wages while reviewing this issue.

Underlying this whole issue is the same paragraph in MCLA 423.215. One provision removes the aspect of policyholder from negotiations while another in the same paragraph requires negotiations with respect to types and levels of benefits and coverages. The Employer has taken the stance that it wants to be the policyholder and further discussions are improper. The Union on the other hand wants to negotiate the level of benefits and coverages, however, demands to utilize a provider that does not allow for the Employer to be the policy holder.

In reviewing Act 336, P.A. 1947, as amended, 423.215 (15)1) reads as follows:

"A public employer shall bargain collectively with the

> representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. Except as otherwise provided in this section, for the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising under the agreement, and the execution of a written contract, ordinance or resolution incorporating any agreement reached is requested by either party, but this obligation does not compel either party to agree to a proposal or require the making of a concession."

In this instant case, for more than one (1) year the Employer and the Union conducted negotiations for a successor agreement. During the initial negotiations the Employer did not demand a change in health care providers but did propose wage increases reflecting the cost of the health care insurance. It was not until well after negotiations had been ongoing, and well after a change in bargaining teams for the Union and the Employer did the issue of policyholder rise. At that time the Employer's position became hard and fast and further discussions were rejected. It could be opined that the Employer did not bargain in good faith as its position could be construed as being regressive.

Conversely, while at the outset the Union demanded continuation of the then current health insurance, it did revise its position to reflect the Employer's desire to save costs. (Union Exhibit #6) Uncontested testimony at the Hearing from Sara Miller indicated a substantial reduction in costs would be realized by the Employer through a switch to MESSA PAK. A reduction of nineteen and one-half percent (19.5%) in premium costs would be immediately available to the Employer. This switch would not, however, satisfy the Employer's position relating to policyholder.

In Union Exhibit #6, dated August 30, 1998 the following position is outlined by the Union:

a. Employees hired after July 1, 1999, during their first 5 years of employment with the District, will receive the Bendle Health Care Plan. Those not needing health will receive $150/month.

b. Employees hired before July 1, 1999 will receive M.E.S.S.A. PAK with Tri-Med (September 1, 1999 or as soon as possible). Any such employee may elect the same PAK except with SC1 health insurance by having the difference in premium withheld through payroll deduction through the IRA section 125 plan. Plan B cash in lieu of health $150/month.

In Union Exhibit #7, dated August 30, 1999, the following separate position of the Employer is outlined:

4. Fringe Benefits

All teachers hired after July 1, 1998 will receive the Bendle Health Care Plan. All other teachers will have the choice between the Bendle Health Care Plan or Tri-Med. Teachers selecting Tri-Med will pay the difference between the cost of the Bendle health Care Plan and Tri-Med.

Plan B $150 cash benefit in lieu of Health Insurance.
No Dual health Coverage

As it can be seen the Union has accepted the idea of the Bendle Health Care Plan, however, in a modest and limited way. The Employer on the other hand also endorses the concept that it will not be the policyholder for all health insurance.

Based on the testimony and exhibits presented at the Hearing this Fact Finder is not persuaded that the Employer's offer, as outlined immediately above, could be properly applied. Experience has shown that with the type of wrap self-funded plan as is the Bendle Health Care Plan, the premiums or costs would fluctuate on a monthly basis and therefore the difference between the two (2) plans would fluctuate on the same basis. It would not seem fair for the employees not knowing on a month-to-month basis what would be deducted from their paychecks.

After reviewing all of the evidence and testimony this Fact Finder recommends the concept

of employees hired after July 1, 1998 be covered by the Bendle Health Care Plan. Employees hired before July 1, 1998 will receive M.E.S.S.A. PAK with Tri-Med. Any such employee may elect the same PAK except for SC1 health insurance by having the difference in premium withheld through payroll deduction through the IRS Section 125 plan.

Additionally, those not choosing either insurance will receive$150.00 per month in lieu of the coverage. Furthermore, employees will not be allowed dual coverage.

WAGES

Based on testimony at the Hearing and evidence presented by the parties this Fact Finder is of the opinion that his might be an issue where the parties are basically in agreement. Evidence shows that throughout the beginning of the negotiation process the Employer presented wage proposals based on reducing hospitalization insurance costs. (Joint Exhibits 1, 2, 3) Initially the Employer presented a proposal to change from the then current hospitalization insurance, M.E.S.S.A., to Community Blues. Along with this change the Employer proposed increasing wages three percent (3%) and one step for the 1998-1999 school year; and two and one-half percent (2 ½%) and one step for the 1999-2000 school year. Again all wage increase proposals from the Employer were predicated on reducing costs in the area of hospitalization insurance. Mr. John Angle, Superintendent for Bendle Schools, testified during this hearing that it was the Employer's intention to fund salary increases through cost containment in the area of health care. At one point in time during negotiations the Employer received information that the costs for Community Blues would be increased by thirty-four percent (34%) and therefore the proposal regarding Community Blues was pulled from the table by the Employer.

The Union's position on wages during negotiations was somewhat in agreement with the Employer, however, it proposed the continuation of the M.E.S.S.A. insurance package.

In August of 1997 the parties reached a tentative agreement on all issues including wages, however, this agreement was rejected by the Association membership. On November 18, 1997 the parties again reached an agreement on all issues and again it was rejected by the Association membership. On January 10, 1998 a third tentative agreement was reached at the table by the parties on all issues and for the third time the membership of the Association refused to ratify. All of the aforementioned tentative agreements contained the above mentioned wage increases. Due to the inability to reach a settlement that would be acceptable to the Association membership the parties returned to the negotiating table and continued their discussions. During the ensuing negotiations the parties broadened their discussions to include additional future years in relation to wages and benefits. (Union Exhibits 5, 6, 7)

Testimony at the Hearing indicated that the parties were now discussing a two and twenty-sixths one hundreds percent (2.26%) and one step increase for the 2000-2001 school year and a two and one-quarter percent (2.25%) wage increase and one step for the 2001-2002 school year. On August 30, 1999 the Employer presented a proposal to the Association that addressed all of the open issues with one major change being that the Employer was no longer packaging the proposal. The Employer's offer was presented as individual counter-proposals to the Association's with no particular proposal tie-barred to another. An attempt was made by the Association representative to accept the Employer's proposal on wages but this was rejected as being after the fact. Mr. Angle in his testimony during this Hearing indicated that the Employer's proposal regarding wages was

still viable.

In that the Employer implemented a wage increase for the school year 1997-1998 the only open years before this Fact Finder are the years 1998 through 2002.

This Fact Finder is persuaded that wages should be increased as follows:

1998-1999 School Year	3% and one step
1999-2000 School Year	2.5% and one step effective the first semester. Effective the second semester an additional step for all unit members hired prior to the 1997-1998 school year and still employed as of the second semester of the 1999-2000 school year.
2000-2001 School Year	2.26% and one step
2001-2002 School Year	2.25% and one step

IN-SERVICE DAYS/CALENDAR

The control over the number of school days and teacher days is very clearly outlined in the State School Code and therefore the parties cannot control the number of days teachers have to work. They can, however, negotiate how the increase in days mandated by the State will apply to the teachers and the compensation for these additional days.

As evidenced by the exhibits presented by the parties as well as the testimony elicited at the Hearing it is rather apparent the parties are not that far apart on this issue. The Employer proposes language be added to the contract that states in part:

> "Student days for 2000-01, 2001-02, may be increased if needed to meet State mandated minimum number of days and/or hours." (Union Exhibit #7)

The Union proposal recognized the need for the increased days, however, differed slightly from the Employer's and is stated as follows:

> "Student days for 2000-2001 may be increased up to 183 if needed to meet State mandated minimum number of days and/or hours. Student days for 2001-2002 may be increased up to 184 if needed to meet State mandated minimum number of days and/or hours."

The Union's objection to the Employer's proposal was based on the fact it would allow the Employer to add days as it sees fit without bargaining with the Union. Testimony at the Hearing from Mr. Angle provide information that the increase in the mandated days could be handled by adding two (2) minutes to each school day. At the end of the school year this would amount to one (1) full school day.

Upon direct examination of Ms. Bregenzer it was determined that the Union would be acceptable to adding two (2) minutes to each school day. Ms. Bregenzer further testified that the proposal put forth by the Union on 08/30/99, (Union Exhibit #6), as well as the proposal presented by the Employer on 08/30/99, (Union Exhibit #7) would be satisfied by adding the two (2) minutes as well as the proposal.

It appears to this Fact Finder that a solution to this problem was available to the parties on 08/30/99 but was not recognized as such by either party. This Fact Finder therefore recommends that a formula of two (2) minutes multiplied by one hundred eighty (180) days be added to each school day for each day the mandated number of days is increased.

The second aspect of this issue relates to how teachers will be compensated for In-Service Days and if the In-Service Days will be mandatory or voluntary. The Employer proposes the

following:

> "Teachers will be paid $100 per day for attending mandatory inservice programs scheduled 5 working prior to the first days of school." (Union Exhibit #7)

The Union proposes:

> "The District shall offer in-service days during the first 2 weeks before classes begin. Attendance at such in-service shall be voluntary. Teachers attending will be paid $100 per day." (Union Exhibit #6)

Mr. Angle testified that the District could hire outside consultants for in-service training at a considerable cost and if attendance was not made mandatory the money paid the consultants would be wasted. Further direct testimony from Mr. Angle indicated that the District would pay the per diem for other voluntary in-service days attended by the teachers.

Ms. Bregenzer testified the Union objected to the Employer proposal as it did not provide for compensation for in-service days that teachers would voluntarily attend.

Again this Fact Finder is of the opinion that a solution to this aspect of this issue was available to the parties on 08/30/99 but was not recognized.

In light of the testimony from both sides at the hearing this Fact Finder recommends that in-service days be scheduled during the two (2) weeks prior to the first day of classes with any mandatory in-service being scheduled during the five (5) days preceding the first day of classes. It is also recommended that all in-service days attended by teachers be paid at the per diem rate of $100.00.

RECOMMENDATIONS

In conclusion, the Fact Finder's recommendations on the issues are outlined in summary fashion below:

1. **Insurance.**

Employees hired after July 1, 1998 shall be covered by the Bendle Health Care Plan. Employees hired before July 1, 1998 shall receive M.E.S.S.A. PAK with Tri-Med. Any such employee may select the same PAK except with SC1 health insurance by having the difference in premium withheld through payroll deduction through the IRA Section 125 plan.

Employees not selecting insurance shall receive $150.00 per month.

No employee shall be allowed dual coverage.

2. **Wages.**

1998-1999 School Year	3% and one step
1999-2000 School Year	2.5% and one step effective the first semester. Effective the second semester an additional step for all unit members hired prior to the 1997-1998 school year and still employed as of the second semester of the 1999-2000 school year.
2000-2001 School Year	2.26% and one step
2001-2002 School Year	2.25% and one step

3. **In-Service Days/Calendar.**

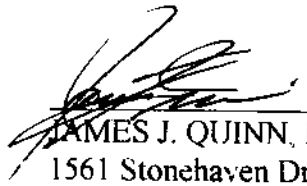
In light of the testimony from both sides at the hearing this fact Finder recommends that in-service days be scheduled during the two (2) weeks prior to the first day of classes with any mandatory in-service being scheduled during the five (5) days preceding the first day of classes. It is also recommended that all in-service days attended by teachers be paid at the per diem rate of $100.00.

CONCLUSION

Fact finding recommendations are just that - recommendations. The parties in this case have demonstrated then deepness of their convictions, and their representatives and witness have set forth their positions. This Fact Finder took into account the parties positions on the issues and in light of the testimony and evidence presented reached recommendations that he believes are fair and workable for all interests involved. It is hoped that with this Fact Finder's assistance the parties will reach an amicable solution to the problems facing them.

As a final point I feel that I would be remiss if I did not advise the Union that it and its membership will most likely face this problem again in the future. If the issue of policyholder is raised by the Employer in a timely fashion the Union will have to accept the fact that it will only have the right to negotiate the level of benefits and coverage.

DATED: 6/12/2000



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