

**MICHIGAN DEPARTMENT CONSUMER AND INDUSTRY SERVICES
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING PURSUANT TO PUBLIC ACT 176 OF 1939, AS AMENDED**

In the Matter of The Fact Finding Between:

MEMPHIS COMMUNITY SCHOOLS,

Employer,

-and-

MERC Fact Finding Case No. D00 C-5020

MICHIGAN AFSCME, COUNCIL 25,

Union.

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A Fact Finding hearing concerning the contract dispute between the parties was held on November 30, 2001, at the offices of the Memphis Community Schools, before Fact Finder Martin L. Kotch.

FACTS

I. The parties are divided over four main issues:

1. Health Insurance – the Union seeks a higher level of coverage. The Board has offered Community Blue 1 coverage, in return for the Union's acceptance of the Board's position on all remaining issues.

2. Waiting time (or "down time") compensation for the bus driver who has driven students to the regional technical school (the "Tech Run") and who must be available to them for the return trip.

3. A proposed requirement that the driver remain at the technical school while the students attend class.

4. A proposed requirement that drivers remain at whatever off-school site to which she has driven students, *e.g.*, a sporting event at another school, for the entire duration of the event.

II. At the outset, it must be noted that the Board expresses continuing concern over the future level of state support for schools, in light of the fact that the Governor has vetoed the proposed state aid bill for 2002-2003. Its position is that any offers made by it will be withdrawn if agreement is not reached prior to the announcement of a revised (and presumably lower) state aid package.

The Board's position makes the issues noted above inextricably linked. Despite its economic concerns over future legislative actions, the Board has proposed to increase its expenditure for health coverage, providing unit members with better coverage than they presently enjoy. This offer, however, is predicated on the Union's acceptance of the Board's position on the remaining issues.

In some respects, the health insurance issue is the most straightforward. It is, clearly, the issue of most importance to the Union. Given that, the Board's proposal to raise the level of the members' coverage to Community Blue 1 was very welcome. Of course, that proposal carried with it the Union's capitulation on all other outstanding issues, a bittersweet, and in the Union's perception, an excessively unbalanced proposition. For the year 2001-2002, costs for health coverage are as

follows:

a.	Present coverage –	\$3,786.00
b.	Community Blue 1 –	\$4,101.60
c.	Community Blue 2 –	\$3,869.04
d.	Community Blue 3 –	\$3,559.20
e.	Community Blue 4 –	\$3,346.32

While the Board offered Community Blue 1, it was contingent upon prevailing on all other issues. Moreover, the Board continues to express economic concerns, owing to the potential for significantly reduced state support. Discussion at the hearing indicated that Community Blue 2 can be provided at a lower cost, and still provide the members with a better plan than they currently have.

2. Drivers are paid for “down time,” *i.e.*, time spent with the bus waiting for a return trip, at a rate lower than the normal hourly rate, which is in the \$11-12 dollar range, depending on driver status. For a field trip, the hourly rate for down time is \$10.63. For the Tech Run, the rate is \$6.24. The Union seeks \$9.24, about 50% higher than the present rate, but still lower than the rate for other down time.

a. The Board takes the position that there is no reason to raise the down time rate for drivers on the Tech Run, since the run is allocated by seniority, and has been among the most highly sought-after routes for the past 11 years. In essence, the run is regarded as a highly prized “perk,” and there is no reason to increase the pay of the already highest paid employees.

b. The Board seeks to impose a requirement that the driver remain at the technical school while the students attend class. At present, there is no such requirement. In part, the Board is responding to citizen criticism related to seeing bus drivers on the Tech Run doing shopping at local retail outlets during their down time.

3. The final issue in dispute is similar to the one last mentioned: the Board seeks a requirement that drivers remain at whatever off-school site to which she has driven students, *e.g.*, a sporting event at another school. The justifications presented by the Board for such a

requirement is that of safety and convenience; the bus and its driver should be ready at all times in case of an medical or other physical emergency, and in case an event is canceled or cut short due, *e.g.*, to weather conditions. The Union's response to this is that often these events take place at sites far away from reasonable bathroom facilities, and which offer nothing in the way of food. Drivers are at the site for many hours, not infrequently through the dinner hour.

RECOMMENDATIONS

Since the health insurance position of the Board hinges on acceptance by the Union of its position on the three remaining issues, I will withhold discussion of health coverage until after my recommendations on those three issues.

1. Compensation for "down time" on the Tech Run.

The Board takes the position that it sees no reason to raise the rate, since senior employees invariably bid for, and get, this run. In a real sense, it penalizes these senior employees for their seniority. Clearly, however, the run has its attractions, since it is always filled by a senior driver, despite the dramatically lower down time rate. The Union has accepted that the job's other perquisites, whatever they may be, warrants *some* differential, but not as great as presently obtains. It proposes \$9.24; the present rate is \$6.24. The field trip rate is \$10.63.

While the Union has apparently accepted the principle of disparity in down time rates, it makes a strong case against the breadth of such disparity – the present rate being virtually 60% of the field trip rate. The Board has put forward no reason for such a great discrepancy. A straightforward balancing of positions would result in a rate of \$7.74, which is roughly 73% of the standard down time rate.

It is recommended that the rate for down time for the Tech Run be set at \$7.74.

2. The proposed requirement that drivers remain at whatever off-school site to which she has driven students, e.g., a sporting event at another school.

The Board has expressed safety concerns as the justification for its proposal. The Union has countered with the need for clean sanitary facilities and access to food. While the Board has made this an all or nothing proposition, there would seem to be ample room for compromise.

The Board received nine responses from an e-mail survey it took on this issue. Eight of the nine schools permitted their drivers to leave the site. Conditions and restrictions varied; virtually all required prior notification to the supervisor present at the site, and a 2-way method of communication in the event a call-back proved necessary.

The two concerns of the drivers are access to food and clean restroom facilities. Both are legitimate, and hardly extreme. As to the Board's safety concerns, they too are legitimate, but, as indicated by the survey, a total ban does seem excessive.

It is clear that one cannot cover in a collective bargaining agreement every possible contingency. The minimum requirements for permitting departure from the site are 2-way communication devices, and permission of the school's senior supervisor at the site. Rather than a distance limit, as some schools have, a time limit would seem to be more in keeping with the notion of emergency readiness. Thus, drivers could be permitted, with the approval of the site supervisor, *and for the limited and express purpose of access to restroom facilities and food*, a time period to accomplish both purposes, but which would, in any case, not take them further than, e.g., 15 minutes driving time from the site.

It is recommended that drivers be allowed, with the approval of the senior school supervisor present at the site, to go to a specified location for the purpose of access to food and restroom facilities. Time limits can be arranged with the supervisor, but in no event should the driver be more than a 15 minute drive from the site.

3. The proposed requirement that the driver remain at the technical school while the students attend class.

While at first blush items two and three appear identical, they are not. The Tech Run driver has

access to clean restrooms, and the school cafeteria. She also has access to comfortable accommodations in the school while waiting for the return run. She has, therefore, no reason to go anywhere, and the use of the school's bus could only be for reasons beyond those which should reasonably be accommodated.

It is recommended that the driver not be permitted to leave the school site.

4. Health insurance coverage.

The Board has proposed Community Blue 1, a significant upgrade, in return for the Union's acceptance of its position on the other outstanding issues. It can reasonably be concluded that *the dollars* are there for the provision of this coverage. Nonetheless, the Board is entitled to negotiate in a *quid pro quo* posture, and it has done so here. As to the other issues, I believe that the compromise dollar amount recommended for the Tech Run is a reasonable one. I further believe that the safety concerns of the Board are more than reasonably alleviated by the compromise recommended above, particularly in light of practice at other schools. The Board should prevail as to the Tech Run issue.

The Community Blue 2 option is still a meaningful upgrade in coverage for the Union. The cost to the Board is \$83 over the present coverage, and \$232 less than the Board would pay for Community Blue 1.

A. It is recommended that the Board provide Community Blue 2 coverage to members of the unit.

The Union has expressed a strong desire for Community Blue 1. The Board had offered this on a contingent basis only. If the recommendations in 1-3 are adopted, the contingency would not have been met. That is the basis for the recommendation in "A." above. However, the dollars, as indicated above, are there. (No one knows what the future of state support will be, and there has been no evidence presented to suggest a "worst case scenario.") The Union indicated a willingness to bear 50% of the difference between Community Blue 1 and Community Blue 2. This would still leave the Board below the cost of its original offer. Any Blue Cross rate increase, of course, would,

of course, be met by a continued, upwardly adjusted, 50% contribution by each employee. The decision to absorb the added cost to move to Community Blue 1 would have to be unit-wide. In the following year of the contract, should rate increases be deemed to be too great, a unit-wide vote could move the coverage back to Community Blue 2, thereby eliminating any contribution by the employees.

B. It is recommended that the Union be given the opportunity to receive Community Blue 1 coverage in the following manner:

- a. Each member would contribute 50% of the difference in cost between Community Blue 1 and Community Blue 2, based on a unit-wide vote to do so.**
- b. In the following contract year, any rate increase would continue to draw this 50% differential contribution from each employee, upwardly adjusted for the increase.**
- c. Should the Union, by unit-wide vote, wish not to continue contributions in that following contract year, the contract would revert to Community Blue 2 coverage, with no contribution by the employees.**

January 4, 2002

Martin L. Kotch, Fact Finder