STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

COMSTOCK PUBLIC SCHOOLS,

Petitioner (Employer),

-and-

MICHIGAN EDUCATION ASSOC.,
(Comstock Education Association),

Respondent (Union).

______________________________/

MERC Fact Finding
Case No: L02 D-4024

APPEARANCES

For the Employer:

Richard D. Fries, Esq.
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251 North Rose Street, 4th Floor
Kalamazoo, MI 49007-3823

For the Union:

Charles J. Corella, Uniserv Director
Michigan Education Association
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- Petition filed: December 18, 2002
- Fact finder appointed: February 4, 2003
- Prehearing: February 11, 2003
- Hearing dates: April 22 & 23, 2003
- Post-hearing positions: June 9, 2003
- Report/Recommendation: July 8, 2003

Fact Finder:

JOHN A. LYONS

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FACT FINDING REPORT AND RECOMMENDATION

BACKGROUND

The parties engaged in several collective bargaining sessions with at least three mediation meetings. They could not reach agreement. The Employer filed a petition for fact finding concerning unresolved issues. In the petition the issues are described as "wages, benefits and school calendar. The Union has also proposed some non-economic issues."

In Section 4a of the Petition, the Employer provides a statement of reasons why publicizing the facts/recommendations would assist. It states:

> The parties have bargained for six months and have not been able to reach agreement. The labor organization has taken its position on this dispute to the public. The employer desires to inform the public of its position regarding attempts to reach a successor agreement.

HEARING/EVIDENCE

The Employer presented Cristie Daniel, Auditor from BDO Seidman, Accountants and Consultants; Todd Mora, Executive Director of Finance/Operations; Timothy Fox, Assistant Superintendent/Human Resources; Carole Schmidt, Superintendent. The Union gave testimony through Uniserv Director Corella and Ms. Gay Weed-Browne, Research Consultant, MEA. The following Exhibits were admitted:

Bd-1	Audit 6/30/02
J-2	2001/2002 salaried work sheet
J-3	2002/2003 salaried work sheet
Bd-4	Vicksburg comparables
Bd-4a	Financial document
Bd-5	Portage School comparable
Bd-6	Parchment School - previous agreement
Bd-7	Parchment School - current agreement
Bd-8	Kalamazoo Valley County Community College
Bd-9	Western Michigan (benefits/rates- faculty)
Bd-10	Pharmacia Health and Group benefits
U-11	(Exhibits 1-148) economic data, ability to pay, positions on all issues
J-12	2000-2002 Comstock Education Association agreement
Bd-13	General Fund expenditure
Bd-14	Foundation grant monies
Bd-15	Board's last best proposal
Bd-16	Prorated cuts Kalamazoo City Public Schools
Bd-17	Comstock student enrollment
Bd-18	Student count - estimate/enrollment projections
Bd-19	Projections (enrollment/Governor's budget proposal)
Bd-20	Staff reduction
Bd-21	Secondary athletic program
Bd-22	Health care costs trends
Bd-23	Undesignated fund comparisons
Bd-24	2000-2001 bulletin 1011
Bd-25	Projected costs of Union's proposal
Bd-26	Teachers total compensation
Bd-27	Changes in compensation categories
Bd-28	1992-94 teacher agreement
Bd-29	Salary survey Dowiagic
Bd-30	Graphics Packaging Corp.
Bd-31	State's budget and its impact on school aid, January '03 (House Fiscal Agency)
Bd-32	Chart re: live births in Kalamazoo County
Bd-33	Election results 1996-1999 re: bond issues
Bd-34	Memo 9/16/02 re: student count and various responses

The record in this hearing is made up of the testimony, and extensive exhibits submitted by the parties.

The fact finder might note that House Bill 4401 as reported in the Senate Fiscal Agency Conference report indicates that pupil membership blend is retained in the House Conference report at a current blend of 80-20. In addition, basic foundation allowance - the per pupil basic ratio allowance is to remain at the same level as FY 2002-2003, that is $6,700.00. The date this so-called boiler plate conference report was completed June 25, 2003.

The basic fiscal condition of the Employer is fairly sound, but could be jeopardized if the foundation allowance is reduced, and the anticipated student enrollment declines more than projected. The auditor would ideally like to see 15% in the unreserved fund balance. The MEA expert suggests that 15% is the ideal not often achieved and that 5% is reasonable. The Employer has an unreserved fund balance of approximately one million six hundred thousand which represents about 6-8% of its general fund. The ideal recommended fund balance has not been achieved during the last eight years. Union Ex. 11, p. 13. The Employer has experienced reduced enrollment, and is fearful that this trend will continue. Reduced enrollment means less foundation allowance from the State. The School District has taken steps - a number of cost cutting measures to address what it considers is a serious income shortfall.

The Employer attempts to modify the traditional way in which wages and economic benefit increases/decreases are negotiated. It seeks to establish a compensation formula similar to the "compensation improvement formula" as exists in the Portage Public Schools. As noted by the Employer:

> If the school district has a good year financially it will share that benefit with its employees; if not, then there will be belt tightening all around.

This compensation formula would also address all economic matters including the cost of health care which is an issue in this fact finding. As noted, the Employer seeks to avoid "continuous protracted negotiations" and would like to instead "sit down and work together to fairly distribute the available resources of the district." This approach was not successful in negotiations because the Union would not agree to this concept. The Board has suggested this method to all of its organized employee groups. Two of the groups have settled. The Board proposal is highlighted on pp. 11 and 12 of its post-hearing summary. It is set forth in full.

> <u>2nd and 3rd years (School Years 2003-2004 and 2004-2005)</u>
>
> Teacher salary increases for the second and third years of the Agreement (2003-2004 and 2004-2005), if any, shall be based on any increase or decrease in the Districts total revenue for each of these two years.
>
> The amount available for teachers' compensation in each of the second and third years of the Agreement shall be determined by multiplying the percent of total expense budget used for teacher total compensation in the preceding school year times the amount of revenue available to the District in the following year.
>
> Total compensation includes: salaries paid to all employees covered by the Agreement, including FICA and retirement costs, and all insurance premiums paid by the Board on behalf of all employees covered by the Agreement.
>
> <u>Example</u>: If the total compensation for all employees covered by the Agreement for 2002-2003 is 75% of the school district's total expense budget, and the revenue received by the school district for year 2003-2004 is $20,000,000, then, for school year 2003-2004, the Association shall have $15,000,000 to be used for the total compensation of all employees covered by the Agreement.
>
> The Superintendent shall notify the Association President within two weeks of the final fall student count day of the amount of foundation grant, and total revenue, to be received by the School District for that school year. Within two weeks of providing notice, the Association President will meet with the District's Superintendent to discuss how the Association desires to distribute the total compensation available to its members for that year.
>
> If the Association fails to provide such notification, the District will first apply any increase in total compensation to FICA and retirement costs,

> then move all eligible employees one step. If the increase is sufficient to pay for all step costs increase, then the district will increase its contribution to insurance premium payments until the Board's contribution is 100% of the premium cost. If the increase in revenue is sufficient to pay for FICA and retirement, steps and 100% of the insurance premium, the balance will be applied to the base.
>
> If new revenue is not sufficient to pay the FICA and retirement costs, then the Board's contribution for insurance premiums will be reduced by an amount that will allow for the payment of increases to FICA and retirement. If an increase is sufficient to pay FICA and retirement costs, but not for step cost increases for all employees covered by this Agreement who are otherwise entitled to a step advancement, then any increase over what was applied to FICA and retirement will be applied to just base pay and no such employee shall be advanced on the step schedule for that year.
>
> A reduction in total compensation shall be applied to insurance premium payments by decreasing the amount the Board contributes to such premiums. In such even the Board will attempt to maintain the most recent ratio between contributions for full-family, two-person, and single subscriber contributions. All increases or decreases shall be retroactive to September 1.
>
> If the Association believes that the Board has not correctly allocated the revenue as required by the terms of this Agreement, it may submit a grievance to binding arbitration and file said grievance directly to arbitration in accordance with the provisions of Section 10.313 of this Agreement.

The Union strenuously objects to an implementation of the suggested compensation formula. It requests traditional increases in terms of wages and salaries to advance from its scheduled pay steps and an increased base scale. It argues "The Union chooses not to pre-determine our choices. The Union chooses to engage in collective bargaining to determine wages. The Union chooses to maintain the status quo with respect to the process by which wages are determined." It suggests an increase in the 2002-03 school year of 2.2%, and a 3.5% increase in the 2003-04 school year. The Union urges status quo as to health care.

The financial condition of the Employer is somewhat questionable as student enrollment continues to decline. The Employer has presented a situation where it has taken numerous cost cutting measures - layoff of teachers and other employees, elimination of programs, instituting a pay-to-play sports program in its high school - to help alleviate financial shortfalls that it has experienced with reduced numbers of students in the 2002-03 school year. The evidence has established that the Employer is operating with less money available. It has taken, even according to the Union's witness, several measures to attempt to reduce its budget shortfall. The Union, on the other hand, argues that the Employer has drifted away from its core function - instruction. That is, the predominant emphasis should be on the pay and benefits of teachers. It argues that the administrators, Finance Manager, Assistant Superintendent and Superintendent, have been well taken care of and have not had to incur the same financial restrictions suggested to be placed on teachers. Obviously, there are only three administrators. They have different benefits than teachers. That's why they're in their positions. But, there is something to be said for "leading by example". Regardless, the fact remains that the District is in a shortfall situation and has experienced serious student enrollment declines and therefore loss of funds. The testimony of Mr. Mora, the Director of Finance and Operations, established that if the Association wage proposals were recommended it could result in the near elimination of the District's fund balance over a two year period.

The issues as originally submitted after the pre-hearing cover wages, salaries, health insurance, number of work days, Association leave days and a non-economic issue involving layoff/recall. All of these issues, but for layoff/recall, are economic.

PARTIES' POSITIONS

Board of Education:

The Board of Education urges the following recommendations:

A. For school year 2002-03, each teacher on the step schedule shall be advanced one step over their salary step in school year 2001-2002. The school district can not afford an additional base pay increase for school year 2002-2003.

B. For school year 2002-2003 the premium cost of health insurance be prorated as follows:

	Board Monthly Contribution	Teacher Monthly Contribution
Full Family	$717	$57
Two Person	$648	$52
One Person	$289	$23

The cost of all other insurance for school year 2002-2003 will be paid entirely by the Board of Education.

The parties should work together to explore other insurance programs and providers that offer comprehensive health insurance at less cost than MESSA. Any savings would first be applied to reduce the teachers' monthly contribution.

C. For school years 2003-2004 and 2004-2005, the adoption of the total compensation formula presented in the Board of Education's proposal of December 5, 2002.

D. Any other contract issue shall remain the same as the current contract language on such issues, with changes subject to future negotiations.

Comstock Education Association:

The Comstock Education Association urges these recommendations:

1. Association Leave: Increase from 9 to 12 - no cost to Employer.

2. Layoff/Recall: Remove word "tenure" from Article 5.52, to provide that all laid off teachers would have recall rights.

3. Number of work days: Status quo of 190 teacher work days.

4. Insurance: Status quo, Schedule C.

5. Wages: 2002-2003 - 2.2% increase
2003-2004 - 3.5% increase

THE ISSUES

Wages:

The Union's position is that language contained in the contract should remain status quo. Schedule A requires advancement of each employee on the pay scale in the several steps (12 for Bachelors and 14 for Masters) as contained in Association Ex. 12 the collective bargaining agreement.

The fact finder cannot disregard the financial condition of the Employer which has been fairly set forth and explained in the exhibits received and the testimony given. It is the fact finder's recommendation that for year 2002-03 no increase be made to the base rate. Each teacher should, however. be advanced in the step schedule over the 2001-02 schedules.

With regard to 2003-04 the Employer requests a recommendation that would includes wages as a part of a total compensation formula. This approach to negotiations is interesting: It may assist the Employer in directing efforts away from protracted negotiations, however, this is a drastic and completely different concept that the fact finder believes must be negotiated and agreed upon by the Union. This should not merely be recommended by a third party. It may be the method by which the parties can come to some accord. Apparently those in Portage School District have but it appears that the result was agreed to by the parties.

This fact finder is very uncomfortable modifying the traditional method of collective bargaining unless there is a total accord by the parties. The Union, in this case, has asked for a 3.5% base rate for the 2003-04 contract year. The fact finder feels that that amount is too high and probably will not be justified by the financial condition of the Employer. However, mindful that the unit should not lose its ranking within its comparables, the fact finder suggests pay increase to the base salary based upon the cost of living index applicable to this period and region.

Health Insurance:

2002-03 - The Board has paid the complete premium and as suggested by the Union, the calendar year is almost over. The benefit levels cannot be modified.

2003-04 - It is no secret that the increased cost of health care is a significant budget item incurred by most employers. The Board seeks contribution based on a compensation formula. Again, the fact finder believes that if the parties negotiate a compensation formula that includes wages, health insurance, and other economic benefits, it must be completely agreed to and approved by the parties themselves. These are difficult issues, but nothing is beyond negotiations if the parties approach the issue realistically. Obviously, the District is economically pressed. However, the fact finder cannot recommend the compensation formula as suggested. The recommendation does contain Board payment limited to a fixed dollar amount during 2002-03. But as suggested by the Union, the premiums are paid, and the year is over.

This "formula," expressed in dollars, may be a guide for 2003-04. Cost sharing (premium sharing) is becoming the rule rather than the exception with regard to health insurance. The suggested amount represents approximately 92% of the health care premium to be paid be paid by the Employer, whereas under the current plan the Employer pays 100% of the premium. Based on these facts, a recommendation can be made that the Employer pay an amount equal to 95% of the premium and the Union pay an amount limited to 5% of the premium.

As noted, premiums have been paid for contract year 2002-03 and should remain without modification. For the period 2003-04 the Employer's contribution should be capped at 95%, expressed either in percentage or dollar amount.

Obviously, the parties should review alternatives because of the continuing escalation of health care costs to explore other possible cost effective health care programs .

Work Year:

The parties apparently have, according to their post/pre hearing positions, agreed to the 190 teacher work day work year. It appears that the issue is not contested.

Association Leave:

The current collective bargaining agreement provides nine teaching days leave during each school year. The Union requests an increase to twelve days per year. The Association reimburses the Board for the cost of substitutes who may be required when a teacher is absent on Association business. The Union urges that there are eight teachers on the negotiating team and that the number of days barely afford time for training and other business. The fact finder finds that the request of the Union is reasonable and would recommend that the twelve days be afforded under the Association leave provisions of Article 3.

Layoffs/Recall:

Article 5, specifically Article 5.52 B, provides a recall procedure that, in relevant part states, "recall of **tenure** teachers shall be in the inverse order of layoff provided, . . . "

Apparently the parties recently dealt with a situation where an employee who was not tenured was considered not subject to recall.

The Union seeks to remove the word tenure in the above provision. It urges that this modification is required because it would afford fair treatment to all employees of the unit. It urges that the comparables internally and externally support this proposal and that it is fair, and in their language "the right way to treat people". The fact finder agrees. The recall procedure should be modified so as to allow the recall of all teachers who are laid off.

SUMMARY

Wages:

2002-2003 - Each teacher to be advanced one step over their salary step in the 2001-2002 schedule.

2003-2004 - Pay increase to base salary to be based on cost of living index applicable to this period and region.

Health Insurance:

2002-2003 - status quo. Premiums have been paid and the costs and benefits should not be modified.

2003-2004 - Employer's cost capped at 95% of premium. Employees' cost capped at 5% of premium. Parties should explore alternative health care coverage because of the continued escalating costs.

Work Year:

190 day year should remain status quo.

Association Leave:

Association leave should be increased from 9 to 12 days per year. Association to reimburse the Board for substitutes.

Layoff/Recall:

The word "tenure" should be removed from Article 5.52B and provide in part, "recall of teachers shall be in the inverse order of layoff provided, ..."

Respectfully submitted,

John A. Lyons, Fact Finder

Dated: July 8, 2003