STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICE
EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between:

ALPENA PUBLIC SCHOOLS BOARD OF EDUCATION

-and-

MERC Case No. L02 H-3014

ALPENA MEA-ESP II MICHIGAN EDUCATION ASSOCIATION - EDUCATIONAL SUPPORT PERSONNEL MEA/NEA

APPEARANCES:

FOR ALPENA PUBLIC SCHOOLS:

Cherie A. Nutter, Human Resource Director

FOR ALPENA MEA-ESP II:

Charles T. Herring, Uniserv Director

FACT FINDER'S REPORT, FINDINGS OF FACT AND RECOMMENDATIONS

Background

The Alpena Public Schools system is located in the Alpena-Montmorency-Alcona Educational Service District. This District is comprised of four local public school districts. These districts and their enrollments are

Local Educational Agencies	Enrollment
Alcona Community Schools, Lincoln Alcona County	1,031
Alpena Public Schools, Alpena Alpena & Presque Isle Counties	5,200

Atlanta Community Schools, Atlanta Montmorency County	458
Hillman Community Schools, Hillman Montmorency County	597

Not only does the Alpena Pubic Schools have the largest enrollment in the Educational Service District, but it services the entire County of Alpena and Presque Township of Presque Isle County.

In addition to serving approximately 5,200 students, the District employs approximately 600 employees constituting 278 teachers, 34 administrators, 16 non-union employees, 40 custodians, 40 bus drivers/mechanics, 38 secretaries, 21 food service personnel, and 133 teacher assistants, security, vocational para-professionals, and less than three-hour food service personnel.

There are five bargaining units representing the District's unionized employees. The Michigan Education Association represents the teachers. The bus drivers are represented in a separate bargaining unit by the Michigan Education Association. The secretaries are represented by the United Steelworkers of America, Local 211. The cooks and custodians are represented by the United Steelworkers of America, Local 207.

The Alpena MEA-ESP II Michigan Education Association-Educational Support Personnel MEA/NEA represents the approximately 133 teacher assistants, security, vocational para-professionals and less than three hour food service personnel. The breakdown of the 133 employees represented in the ESP II bargaining unit is as follows:

Paraprofessionals	6
Security Personnel	8
Library Assistants	9
Cafeteria Helpers (less than 3 hours/day)	20
Instructional Assistants	90

Not only do the other four bargaining units have separate collective bargaining agreements, but at the present time these employees are covered by existing binding collective bargaining agreements. It is only the Alpena MEA-ESP II (hereinafter called ESP II Support) contract that has not been resolved since its expiration on August 31, 2002.

The previous Collective Bargaining Agreement between the Alpena Public Schools and MEA-ESP II, in its last year (2001-2002), had a wage re-opener. The parties eventually settled the issue of the wage re-opener through mediation with the parties agreeing to a 3% across-the-board increase. It is the successor Agreement that is in dispute following 15 negotiation sessions and one mediation session. The ESP II Support called for fact finding on February 1, 2003. The Undersigned was appointed Fact Finder, conducting a fact finding hearing on Saturday, January 24, 2004 and proceeds to issue this Report and Recommendations.

The Criteria

The aim of fact finding is to guide the parties as to the terms and conditions which, in the view of a neutral, can be the basis for resolving the parties' dispute so as to enable them to reach a collective bargaining agreement. In reaching recommendations, a fact finder is guided by certain criteria. Though in the context of compulsory arbitration, the legislature as to contract disputes involving police and fire services, Act 312 of Public Acts of 1969 does set forth certain criteria that the legislature intended Act 312 arbitrators to follow in arriving at awards. Thus, in Section 9 of Act 312, the following criteria have been set forth:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable.

(a) The lawful authority of the employer.

(b) Stipulations of the parties.

(c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(d) Comparison of the ages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

 (i) In public employment in comparable communities.

 (ii) In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Essentially, these criteria address the cost of living, the financial ability of the governmental unit to fund the award, and comparables both internally and with other similarly situated public and private employers in the geographical area involved and do represent criteria followed by fact finders. But there is also Section 9(h) which references additional criteria followed by fact finders.

Among these additional criteria is the bargaining history. The bargaining history not only means the current bargaining history between the affected parties, but also the parties' previous bargaining history, as well as the bargaining history among employees of the employer in other represented bargaining units. This criteria becomes most important here. The disputes presented to the Fact Finder are against a background of a bargaining history between the parties over the years. There is also the fact that the other bargaining units of employees of the Alpena Public Schools have settled contracts that can serve as a guide to making recommendations as to the issues separating the parties.

Another criteria utilized by fact finders is what has been called the "art of the possible." The "art of the possible" in concept means that if the parties were left to their own devices and the public employees involved had the right to strike, the parties as a strike deadline loomed would attempt to compromise in order to avoid a disruption in public service. The concept is that, in compromising, the parties would review their respective positions and attempt to reach a resolution based on the art of the possible, as the art of the possible is the essence of compromise. Faced with external pressures, the parties would review their respective positions and attempt to consider possibilities in order to reach a compromise.

Concomitant with the art of the possible is the recognition that fact finding, as would be true with binding arbitration under Act 312, is a substitute for a strike. And the Fact Finder's function is to attempt to present the guidelines to resolve the dispute – just like a strike eventually, with some exception, does result in a resolution of the underlying contractual dispute.

It is this criteria that will guide this Fact Finder in making recommendations herein.

The Issues

The issues separating the parties are wages, health insurance, paid holidays in lieu of health care, sick leave issues including increased sick leave accumulation, paid holidays for employees working less than six hours (30 hours per week), a death benefit proposal for the continuation of health insurance payments on death. There is also an issue concerning transfer language as well as language as to sick leave.

The Bargaining History

A. Introduction

When coupled with internal comparables and recognizing that the core of the dispute between the parties centers around wages and health insurance, the bargaining history of the parties becomes most important in the consideration of the issues raised. Thus, in the view of this Fact Finder, the bargaining history should be reviewed so as to focus on a basis for settlement of the dispute.

B. Health Care

Though the bargaining unit has 133 employees, only 70, based upon hours worked, are eligible under the parties' just expired Collective Bargaining Agreement for health insurance. Of the 70, 35 have health insurance coverage which is a Traditional Blue Cross/Blue Shield fee for service program. Presently, these 35 employees pay 40% of the insurance premium cost and a $2.00 co-pay for drugs. The District pays 60% of the insurance premium cost. This premium sharing arrangement has had an evolutionary history. At one time prior to 1990-91, the premium sharing arrangement was 50% for the employee and 50% for th District. In the 1990-91 negotiations, the parties adopted the 60%/40% arrangement. This suggests that in successive bargaining over the years of the contractual relationship between the parties, there has been modification in this cost sharing arrangement.

The second aspect of bargaining history as to health insurance, and for that matter wages, centers around the settlements with the other bargaining units.

C. The Settlement With ESP II (Bus Drivers, Local 211 USWA, Local 207 USWA and the Teachers

At the same time that there was a contract re-opener with the bargaining units and a settlement at 3%, no change in health insurance, the District was addressing re-openers with the ESP Bus Drivers and the two USWA Locals. The District approached each group, including the ESP II Support, asking for consideration of a rollover. This meant that in addition to addressing the re-opener for the school year 2001-2002, the District was seeking to negotiate a settlement covering school years beyond 2001-2002. The ESP II Support declined such an invitation. Instead, in mediation, the ESP II Support settled the re-opener with the District with a 3% wage increase and no change in health insurance, including no change in the co-pay as to the insurance premiums, no change in the \$2.00 drug co-pay, and the continuation of Traditional Blue Cross/ Blue Shield.

On the other hand, the Bus Drivers agreed to extend their contract through the 2004-2005 school year ending on August 20, 2005 with a 3% increase in each of the four school years, including 2001-2002. This is the same arrangement with both Locals 211 (Secretaries) and 207 (Cooks and Custodians) USWA. In addition, each of the three groups agreed, beginning in 2001-2002, to a prescription drug co-pay of \$10.00 "with \$8.00 reimbursed for the first three years of the contract with a full \$10.00 (no reimbursement) in year four of the contract." However, in each of the contracts, the Units had a me-too clause, namely, that if the teachers negotiated a different co-pay than the $10.00 no reimbursement in the fourth year of the contract, then this would be the provision as to drugs in these contracts. The language as to this effect in the two USWA contracts read:

> The Board will provide hospital-medical care coverage equivalent to that existing during the 2000-01 school year except for the level of co-pay for prescription drugs. Commencing November 1, 2001, the Board shall provide a $10.00 co-pay prescription drug plan. During the 2001-02, 2002-03, and 2003-04 contract years, upon submission of required documentation, the Board shall reimburse the employee $8.00 of the employee paid $10.00 co-pay for each prescription drug. Commencing with the 2004-05 contact year, and thereafter, the employee shall receive no reimbursement of prescription drug co-pay expenses. However, should the Board agree to a lesser amount of prescription drug co-pay in contract negotiations with the Alpena Education Association in their next round of bargaining to achieve a successor agreement to the one currently in force (August, 2001 through August, 2004) that same prescription drug co-pay shall be afforded to members working under the conditions of this contract.

The Bus Driver's contract on this point read:

> During the 2001-02, 2002-03, and 2003-04 contract years, upon submission of required documentation, the Board shall reimburse the employee $8.00 of the employee paid $10.00 co-pay for each prescription drug. Commencing with the 2004-05 contract year, and thereafter, the employee shall receive no reimbursement of prescription drug co-pay in contract negotiations with the Alpena Education Association in their next round of bargaining to achieve a successor agreement to the one currently in force - August, 2001 through August, 2004, that same prescription drug co-pay shall be afforded to members working under the conditions of this contract.

In their contract, the teachers agreed to a $10.00 co-pay with $8.00 reimbursement. The teachers' contract expires at the end of the 2003-2004 school year and there is no agreement as to health insurance with the teachers beyond this point. This explains the me-too language with the non-instructional bargaining units.

Each of the bargaining units, including the teachers, continue with the Traditional Blue Cross/Blue Shield program. There was also agreement with the bus drivers that in the fourth year of the contract "drivers to get a 90%/10% Master Medical co-pay."

As will be explained in the discussion on health care, these changes in drug co-pay with the four other bargaining units represents cost containment that the District did not obtain with the ESP II Support group. Likewise, there was no agreement as to wages beyond 2000-2002.

D. The Current Bargaining History

After 11 negotiation meetings beginning on June 13, 2002 to negotiate a successor to the contract expiring August 31, 2002, which included the settlement of the wage re-opener for 2001-2002, the Board presented a package proposal in December 2002 to the Association that provided for a three year agreement with 3% increases each year, with insurance options of Traditional Blue Cross 60/40 with $10.00 co-pay; Community Blues PPO-1 70/30 with $10.00 co-pay; Community Blues PPO-2 75-25 with $15.00/$30.00 co-pay. The reference to 60/40, 70/30 and 75/25 was to the premium co-pay. In January, the Association presented a package proposal of a three year agreement with a 3% increase each year, 100% Board paid Community Blues PPO-1 $10.00 co-pay with $8.00 reimbursement.

In a bargaining meeting on February 6, 2003, the District's bargaining representative advised the Association bargaining team that, because of anticipated budget reductions caused by concerns that foundation aid would be cut, the District's offer is "good as it's going to get." On March 4, 2003, District representatives advised Association representatives that the District was pulling its package proposal off the table and reverting to its last formal proposal of a one year agreement with a .5% increase in wages.

There was a meeting on March 6, 2003 between the bargaining teams to discuss the proposals. As a result, on March 10, 2003, the Association chief negotiator, Uniserv Director

Charles T. Herring, wrote Cherie Nutter, the District's Human Resources Director, as follows, which was faxed:

> This letter is to confirm our conversation of March 6, 2003 pertaining to a TA on the ESP II contract.
>
> My understanding of our talk is as follows:
>
> 1. All TA's signed with the exception of Article 8, <u>Vacancy and Transfers</u>, paragraph 5, "an interview process where applicable" will be incorporated into the Master Agreement.
> 2. The contract will be two years in duration: September 1 2003 through August 31, 2004.
> 3. All dollar amounts will be increased by 3% each year.
> 4. All members will receive retroactivity (back to the first day of work for the 2002-2003 school year) within 30 days of ratification.
> 5. Change present insurance wording to include:
>   a. Change to Community Blue PPO-1.
>   b. Board pays 70% of premium and employee pays 30% of premium.
>   c. The prescription co-pay will go to $10/script (Generic) with an $8.00 reimbursement plan found in the bus driver, secretary, and cook/custodial contracts.
> 6. The proposals for Article I, <u>Recognition</u>, Article IV, <u>Association/Employee Rights</u>, Article X, <u>Conditions of Employment</u>, and Article XI, <u>Leaves of Absence</u>, to be dealt with at our next meeting.
> 7. We will meet Wednesday, April 3, 2003 at 4:30 p.m. in the MEA office to finalize the aforementioned.
>
> Hopefully, this will bring to close this round of bargaining with the Alpena ESP II for a while.

By letter dated March 10, 2003, Cherie A. Nutter wrote Mr. Herring:

> I received your fax regarding our meeting of March 6, 2003. I am writing to clarify a few items of our discussion.
>
> We agreed that a two-hear agreement would be in the best interest of both parties, however, we did not agree on a 3% wage increase for both years of the agreement. I had indicated to you that in light of the Board's request for a wage freeze from other employee groups, a 3% increase for the second year is unlikely. I do not recall discussing the issue of retroactivity.
>
> We also discussed the prescription reimbursement plan, but we did not

come to agreement on this issue.

I will be meeting with the Board's negotiating team next week. We will present an updated proposal of the Board's position at our April 3, 2003 meeting.

At a meeting on April 3, 2003, the District proposed the following package proposal to the Association:

ALPENA PUBLIC SCHOOLS BOARD OF EDUCATION PACKAGE PROPOSAL TO BE TAKEN IN ITS ENTIRETY OR WITHDRAWN

April 3, 2003, 4:30 p.m.

1. Two year agreement, .5% increase on salary schedule for 2002-03 (retroactive to September 1, 2003), 0% increase on salary schedule for 2003-04.

2. Health Insurance - Community Blue PPO-1 with Board share 70%, employee share 30%, prescription co-pay $10 (non-reimbursable)

3. All contract language according to previously signed tentative agreements

The Association responded with a 5% wage increase for each of four years, 100% Board paid health insurance with $10.00 co-pay with $8.00 reimbursed to employees. This proposal was based on a Blue Cross/Blue Shield Traditional plan. There was also a proposal from the Association to permit 42 days of sick leave accumulation whereas the District had proposed the current 33 day maximum, but provided that the current year's allowance may be used for family illness.

E. Bargaining History as to Article 8 - Vacancy and Transfer, Section 8.1, subsection 5

At a meeting on August 12, 2002, the parties had come to a tentative agreement on the following vacancy language:

8.1 Vacancy

5. In filling vacancies, preference will be given to applicants within the same classification, based on the applicant's ability to meet the qualifications of the position as established by the Board, seniority and **AN INTERVIEW PROCESS WHEN APPLICABLE**. When there are no qualified applicants within the same classification, the Board will fill the vacancy from qualified applicants from other classifications. In the event the vacancy remains unfilled, persons on recall will be notified of the vacancy and if qualified will receive consideration over any outside applicants. In the event a disagreement arises from the filling of vacancies as governed by this clause, it shall be grievable to binding mediation. The mediator shall have no power to mandate a remedy.

At a subsequent meeting on February 14, 2003, Association representatives advised the District's representative that the Association could no longer agree to the words "an interview process when applicable." At mediation on May 28, 2003, the Association reiterated this position.

Conclusion

This bargaining history reveals that the District was attempting to move from Blue Cross/ Blue Shield Traditional insurance coverage to a Preferred Provider consistent with the new package being offered by Blue Cross/Blue Shield, namely, Community Blues. The history, as revealed with the other bargaining units, was that the District was moving toward cost containment in prescription benefits; that, thus far, ESP II-Support had not participated in this movement. As will also be explained, the District during negotiations became concerned with its financial ability to meet the last best offer it had put on the table prior to March 4, 2003, resulting in the withdrawal of the package proposal. The package proposal had also indicated that the District, in response to going through a Preferred Provider plan, was prepared to increase its contribution toward the employee's insurance premiums.

The Issues In Dispute

At the time of the mediation session on May 28, 2003, there were certain issues between the parties. These issues were reiterated in the Petition for Fact Finding. By the time the Fact Finder arrived for the fact finding hearing on Saturday, January 24, 2004, there had been some modification of the issues. The issues in dispute and the parties' respective positions included:

ALPENA PUBLIC SCHOOLS
ALPENA MEA-ESP II
2002-03/2003-04 NEGOTIATIONS

SIGNIFICANT ISSUES IN DISPUTE

Article No.	Description of Issue	Board Position	Association Position
8	Filling of vacancies	Language as TA'd on 8/12/02	Remove "an interview process when applicable" from TA'd language
10	Wages	.5% 2002-2003, 0% 2003-2004	5% for 4 years
10	Insurance	Choice of: BCBS Traditional 60%/40%; Community Blue PPO-1 70%/30%; Community Blue PPO-2 75%/25%; $10 prescription co-pay with any of these plans	100% Board-paid health insurance; $10 co-pay with $8.00 reimbursed to employee
11	Accumulation of sick leave	33 days maximum, only current year's allowance may be used for family illness	42 days maximum

In addition to Article 11, Leaves of Absence, Section 11.1, Subsections 2 and 3, the Board had proposed the following language:

2. An employee shall be entitled to nine (9) paid sick leave days per year for the employee's personal illness **OR THE ILLNESS OF A MEMBER OF THE IMMEDIATE FAMILY. FOR PURPOSES OF SICK LEAVE, IMMEDIATE FAMILY SHALL BE DEFINED AS THE EMPLOYEE'S SPOUSE, CHILD, PARENT AND A**

PERSON LIVING IN THE SAME HOUSEHOLD.
~~**Beginning with 1994-95,**~~ Unused sick leave will be cumulative but shall not exceed thirty-three (33) sick days accumulation. **ACCUMULATED SICK LEAVE DAYS MAY BE USED ONLY FOR THE EMPLOYEE'S PERSONAL ILLNESS.** Proof of illness may be required at any time. Sick leave will be prorated for employees working less than **THE FULL** school work year. An employee who has exhausted available sick will be placed on unpaid leave for a period of time up to one year from expiration of the sick leave.

3. ~~Family Emergency:~~
~~Employees required to be absent because of an emergency illness of a member of the immediate family may use up to three (3) sick leave days in any one (1) work year. These days shall be deducted from the sick leave allowance. The term "immediate family" shall be defined as the employee's spouse, children and parents.~~

The Association seemed on this issue to be emphasizing the increase in accumulation of sick leave.

The Association also made certain other proposals that are before this Fact Finder which the District has rejected. These proposals are:

10.4 Paid Holidays in Lieu of Health Care
In lieu of health care coverage, any eligible employee not electing said health insurance protection will receive four (4) paid holidays per year (Labor Day, Thanksgiving, Christmas Day, and New Year's Day).

10.6 Paid Holidays
Employees working less than six (6) hours (thirty (30) hours) will receive the following paid holidays: Labor Day, Thanksgiving Day, Christmas Day, New Year's Day, Good Friday, Memorial Day.

AESP Death Benefit Proposal

The Board will discontinue payment of insurance premiums for any employee who voluntarily terminates employment and who has not yet completed his contractual obligation.

Employees desiring additional coverage must pay the balance on an individual basis.

In the event of the death of an employee, the employer shall continue payments of the applicable contributions for the employee's eligible dependents as defined by this contract for the duration of the employee's contract obligation or a minimum of three months, to begin on the first of the month following the date of death.

Health Insurance

To understand the health insurance issue, it is necessary to address the foundation of the dispute between the parties on this issue. The history of health insurance increases for the Alpena Public Schools in the last five school years for all bargaining units has been as follows:

1999-2000	7.70%
2000-2001	22.70%
2001-2002*	10.00%
2002-2003	18.50%
2003-2004	9.69%
Five Year Total	68.59%

*Changed from $2.00 to $10.00 prescription co-pay.

In the year 2000-2001, the increased cost was 22.70%. This was reduced by changing the co-pay. But, even then, by 2002-2003, the cost went up to 18.5%.

The Association countered by suggesting that the percentage of total expenditures against the revenues of the District for health care had gone from 7.52% in 1996-97 to a high of 2000-2001 9.40%, and in 2001-002 was 9.24%. But the fact is health care costs are increasing, particularly in the area of drugs. A national newsletter published by H.R. Comply also points out that more employees, based upon the 2000 Bureau of Labor Statistics Surveys, are now enrolled in Preferred Provider organizations, PPOs, rather than traditional fee for service plans. In fact, 51% are enrolled in PPOs, 40% in Health Maintenance Organizations, and 10% in traditional fee for service plans. Escalating health insurance costs have spawned attempts to control same by adopting high drug co-pays and adopting PPOs. This is understandable because health insurance costs and its increases are no longer a minor expense. For example, in the present plan with the Association with a $2.00 co-pay, a full family premium is $821.45 per month, a two person is $704.10, and a single is $335.30. This is, by any definition, a substantial cost. A 2003 survey prepared by the Range Group Inc. highlights the fact that school districts in Michigan are addressing such increased costs by changing health insurance carriers and addressing drug co-pays.

To put the discussion here in the proper context, assuming that the District accepted the full insurance premium costs for the annual premium, the District estimates that its costs would increase for this bargaining unit among the members who are participating in the health insurance program and those who potentially could would be in the neighborhood of $350,000.00 during the life of the contract.

Another element is that this bargaining unit did not agree to a $10.00 co-pay as did the other bargaining units beginning in 2001-02. As a result, with the Bus Drivers in that bargaining unit, the District saved $14,204, with the secretaries $23,710, and with the cooks and custodians $36,035. Presumably there was similar savings with the teachers. Yet, by declining to participate in the $10.00 co-pay program with $8.00 reimbursed, the District obtained no such savings with the Association.

The District has also prepared an insurance fact sheet as to Community Blue PPO 1 with a $10.00 co-pay, no reimbursement, with the following analysis:

	Cost/mo.	**Employer 70%**	**Employee 30%**	**Employer Savings from Present**	**Employee Savings from Present**
FF	$689.60	$482.72	$206.88	$10.15 (2%)	$121.70 (37%)
2-person	$591.11	$413.78	$177.33	$ 8.68 (2%)	$104.31 (37%)
Single	$281.48	$197.04	$ 84.44	$ 4.14 (2%)	$ 49.68 (37%)

This is based upon the District's proposal of a 70% payment of the employee's insurance premium with the employee paying 30%. It is clear that if the District went to a Community Blue PPO-1, there would be a substantial savings or cost containment over the present Traditional plan. This particularly follows if the $10.00 co-pay is adopted. In fact, if the District went to a Community Blue PPO II Plan, the cost savings would be greater because, under the Community Blue PPO II Plan, the cost per month presently would be:

FF	$586.88
2-person	$503.03
Single	$251.24

A comparison of the plans does suggest that the Community Blue PPO Plan 1 furnishes substantially the same benefits that are now being furnished under the Traditional plan with some additional provisions such as well-baby and child care. In other words, the Community Blue PPO Plan 1 provides similar, and in some cases improved, benefits to the employees. Furthermore, the Fact Finder was advised that only one physician in Alpena is not in the Community Blue Preferred Provider organization plan.

Though Community Blue PPO-2 was discussed, it is a plan with some co-pay not in the Community Blue PPO-1 plan. The Fact Finder concludes that the District would be satisfied (based on cost saving) with furnishing its employees with the Community Blue PPO-1 plan as it is more akin to the current plan than is the Community Blue PPO-II plan.

It is these facts as to the health insurance component that will guide the Fact Finder in the final recommendations that he makes to the parties.

<u>The Ability To Pay</u>

The basic source of revenue of the School District, in addition to possibly certain governmental grants, is two-fold, namely, local taxes and state aid or foundation allowance. In

1999-2000, the foundation allowance per child was $5,700, an increase of 10.25% from the previous year. In 2001-2002, the foundation allowance was $6,500. In 2002-2003, it was $6,700, or a 3.8% increase. In 2003-2004, the proposed foundation allowance was $6,700, meaning no increase.

The foundation allowance is based on per student. If there are less students, there is less foundation allowance. Since the early 1970's, the District has experienced a steady decline in enrollment. There were approximately 9,000 students in the District in 1973. Currently there are approximately 5,000 students. Since 1995, the enrollment has declined by an average of 115 students per year and this decline is expected to continue. For example, in the year 2003-2004, the decline was 70.21 students, whereas in the previous 2002-2003 year, the decline was 152.43 students.

Though the foundation allowance for 2000-2003 was $6,700 per student, because of the State's financial situation this allowance was reduced by $89 per student to $6,011. The current $6,700 foundation allowance for 2003-2004 has similarly been reduced by $84 to $6,616. This is still subject to change. Furthermore, the public press is indicating that for the upcoming fiscal year the State of Michigan expects a significant revenue shortfall in the area of $1 billion, which could very well impact on the foundation allowance.

Against this background of concern over revenue flow, in 2002-2003, upon receiving the aforementioned proration of his per pupil foundation allowance, the District reduced expenditures for the remainder of the 2002-2003 fiscal year by approximately $500,000. For the school year 2003-2004, though the foundation allowance was expected to remain at $6,700 per pupil, another proration was expected which came to pass. In addition, the District was predicting a decline in student enrollment by as many as 240 students and in 2004-2005 the District predicts a further decline.

Budgets are predictions of revenue and expenditures in the future. Budgets are sometimes difficult to prepare with absolute accuracy, given a variety of factors.

Nevertheless, faced with declining student enrollment and proration of the pupil foundation in February 2003, the District began planning for a reduction of $5.5 million in its anticipated expenditures for the 2003-2004 budget year. This is understandable with the declining enrollment and the erosion by the State of the District's foundation allowance, coupled with the fact that the District had given raises to both teachers and the other groups in anticipation that it would be receiving the predicted foundation allowance, even though the allowance for 2003-2004 had not been increased.

The result of the District's planning was that two elementary schools were closed, 19 teachers were laid off, at least two secretaries and, according to the Board, 33 members of the support bargaining unit.

The District, as part of its planning, even sought to have the bargaining units having settled contracts to grant wage concessions. The bargaining units declined to do so.

Though the Association through its witness questioned some of the financial data presented by the District, as one would expect in an advocacy context, the fact is the closing of two elementary schools and the elimination of 19 teachers indicates that the District's action was not whimsical, but concern over the ability to keep the District financially stable to avoid further cuts in educational services. Therefore, the Fact Finder recognizes that the District was acting with financial prudence, addressing difficult financial times.

The figures presented by the Association take on two forms. The Association presented an exhibit referred to as "Comparisons of Proposals" as follows:

DISTRICT **COST** **AESP-II** **COST**

DISTRICT

Salary

02-03	0.50%	$9,219
03-04	0%	$0

Insurance

02-03	keep 40% copay, increase Rx copay to $10	$0
03-04	keep 40% copay, increase Rx copay to $10	$0

Cash in Lieu

02-03	None	$0
03-04	None	$0

$ Less than 6 HRS

02-03	None	$0
03-04	None	$0

Total $9,219

AESP-II

Salary

02-03	5%	$92,185
03-04	5%	$62,344

Insurance

02-03	Fully paid	$108,553
03-04	Fully paid	$108,553

Cash in Lieu

02-03	4 days pay	$9,219
03-04	4 days pay	$9,680

$ Less than 6 HRS

02-03	5 days pay	$5,000
03-04	5 days pay	$5,250

Total $400,784

DIFFERENCE BETWEEN DISTRICT AND ESP II PROPOSAL $391,565

There is some dispute between the parties as to the cost of the Association's insurance proposal with the District maintaining that the cost of the insurance proposal alone was upwards of $395,000. Regardless of this dispute, there is no question that the insurance proposal is a substantial cost coupled with a proposed salary increase that is at a higher percentage than any of the bargaining units. On the other hand, the Association does make a point that the District's proposal is most modest when considering that other bargaining units did receive higher increases. The District has prepared a cost analysis that is somewhat different as to the ESP II Support cost analysis, namely:

MEA-ESP II Proposal		**vs.**	**Board of Education Proposal**
Wages			
2002-03	$ 55,311.00		$ 9,219.00
2003-04	$ 44,531.00		$ 7,145.00
Health Ins.	$345,222.00		-$ 2,618.00
	$445,064.00		$13,746.00

The Association presented an exhibit entitled "Ramifications of Reductions to the Alpena USP-II Unit" which reads:

Total Salary, Retirement, FICA, and Workers' Comp Cost of ESP II Bargaining Unit 2002-03	$1,877,899.03
Number of ESP II Bargaining Unit Members 2002-03	160
Average Cost Per ESP II Bargaining Unit Member	$11,736.87
Reduced Positions	27
Savings From ESP II Bargaining Unit Reduction	$316,895.26

There is a problem with this analysis. The District did not reduce the number of teachers, closed two schools, and reduce the number of members in this bargaining unit to fund ESP II Support increases, particularly when the increases sought are in the 5% category and, as the District has pointed out, this bargaining unit did not contribute to the cost containment of health insurance beginning with the 2002-2003 school year. What the District did was take steps to ensure its fiscal health in order to avoid further layoffs and concomitant cuts in educational services for the children of the District. This being said, the Association pointed out that, as a result, the District actually added to its general fund balance as between 2002-2003 and 2001-2002. Indeed, the history of the fund balance in the Alpena Public Schools is:

General Fund Balance History
Alpena Public Schools

Year	% of Expenditures	GFB in Dollars	Dollar Change
96-97	16.32%	$5,170,719.00	$1,134,686.00
97-98	21.26%	$6,870,104.00	$1,699,385.00
98-99	21.62%	$7,347,366.00	$477,262.00
99-00	18.94%	$6,918.111.00	-$429,255.00
00-01	18.87%	$7,333,234.00	$415,123.00
01-02	18.78%	$7,673,704.00	$340,470.00
02-03	21.72%	$8,682,668.00	$1,008,964.00

Following up on this exhibit, the Association presented "General Fund Balance: District Comparisons," which reads:

Area Units	2001-02 GFB	2002-03 GFB	Change GFB 2002-03	2002-03 GF Oper. Exp	2002-03 GFB %	2003-04 Pupils
Alcona Community Schools	$ 1,251.845	$ 1,232,688	$ (19,157)	$ 7,491,969	16.5%	1,010
Alpena Public Schools	**$ 6,292,969**	**$ 7,734,867**	**$ 1,441,898**	**$ 37,722,647**	**20.5%**	**5,089**
Atlanta Community Schools	$ 504,404	$ 36,783	$ (467,621)	$ 4,533,066	0.8%	499
Hillman Community Schools	$ 147,091	$ 34,819	$ (112,272)	$ 4,395,391	0.8%	585
Johannesburg-Lewiston Schools	$ 996,639	$ 1,019,139	$ 22,500	$ 6,794,965	15.0%	862
Mio Au Sable Schools	$ 1,021,603	$ 1,148,634	$ 127,031	$ 6,393,829	18.0%	836
Posen Cons School District	$ 509,675	$ 352,826	$ (156,849)	$ 2,567,305	13.7%	323
Rogers City Area Schools	$ 1,320,295	$ 1,215,536	$ (104,759)	$ 5,139,377	23.7%	697

School BoardComparables	2001-02 GFB	2002-03 GFB	Change GFB 2002-03	2002-03 GF Oper. Exp	2002-03 GFB %	2003-04 Pupils
Alpena Public Schools	**$ 6,292.969**	**$ 7,734,867**	**$ 1,441,898**	**$ 37,722,647**	**20.5%**	**5,089**
Cadillac Area Public Schools	$ 6,422,164	$ 4,399,773	$ (2,022,391)	$ 26,874,405	16.4%	3,477
Gaylord Community Schools	$ 1,774,928	$ 1,783,029	$ 8,101	$ 24,786,894	7.2%	3,458
Mackinaw City Public Schools	$ 973,957	$ 934,213	$ (39,744)	$ 1,976,028	47.3%	246
Manistee Area Public Schools	$ 984,111	$ 222,83439	$ (761,277)	$ 13,636,155	1.6%	1,815
Pellston Public School District	$ 402,249	$ 345,207	$ (57,042)	$ 5,685,646	6.1%	765
Vanderbilt Area Schools	$ 382,769	$ -	$ (382,769)	$ 2,238,432	0.0%	258
*TBA ISD (statistics not available						

What this does show is that with the exception of Rogers City and Mackinaw City Public Schools in the north area of the Lower Peninsula, Alpena has the highest percentage of general fund balance in relationship to general fund operation expenditures. Of the districts compared besides Alpena, only Johannesburg, Mio and Gaylord actually added to their general fund balance in 2002-2003. Though this does suggest that the Alpena District could fund the recommendations being made by this Fact Finder, and does have the ability to pay, the District should not be penalized for following a prudent fiscal policy.

In fact, the Fact Finder was advised that the District's expenditures for the 2003-04 school year will substantially impact on its general fund balance and that the District will not be as fortunate as in 2002-2003 in adding to the general fund balance. The District anticipates that it will be required to use approximately $860,000 of its assets to balance the budget for the 2003-2004 school year, which will impact on the District's general fund balance.

Having conducted the above analysis, the Fact Finder does emphasize that it is imperative that the District continue to be fiscally prudent or unfortunately there could be further cutbacks which are not in the interest of the children or the employees. One does not know the impact of the continuing fiscal problems in Michigan on the foundation amounts. One does not know whether, through Executive Orders, the foundation can continue to be prorated. The jury is out on this point, which only emphasizes that fiscal responsibility in a school district such as Alpena is imperative and in the interest of all parties involved.

Having said the above, however, this Fact Finder believes that a recommendation buttressed in the art of the possible concept is consistent with the fiscal policies of the District and the District's finances.

The External Comparables

Both parties presented external comparables with selected districts in the northern part of the Lower Peninsula plus other districts. These external comparables are not particularly helpful because it is the internal bargaining history that offers the best guidelines toward a potential settlement. However, it is noted, for example, that of the 11 districts surveyed by the Association, only two had fully paid health insurance per family. There were two at 50% paid, one at 60%, one at 63%, two at 85%, one at 90%. For single subscribers, there were three – one at 100%, one at 75% and one at 63%. In other words, there is no overall pattern in employment payment toward insurance premiums. In the area of instructional assistants' wages, noting that Alpena has two classifications – a non-degree and an associate's degree or equivalent – as an example, the comparables indicate:

Northern Michigan Starting Wage	
Hillman	$ 6.89
Marquette	$ 7.27
Alcona	$ 7.38
Crawford AuSable	$ 7.54
Posen	$ 7.98
Alpena (non-degreed)	**$ 8.50**

Northern Michigan Top Wage	
Posen	$ 7.98
Alpena (non-degreed)	**$ 9.25**
Cheboygan	$ 9.68
Hillman	$10.03
Rogers City	$10.08
Alcona	$10.31

Rogers City	$ 8.61
Cheboygan	$ 8.63
Traverse City	$ 9.11
Gaylord	
Alpena (Associate degree or equiv.)	**$10.05**
Cadillac	$10.36
Petoskey	$10.67

Alpena (Associate degree or equiv.)	**$10.92**
Gaylord	$11.04
Traverse City	$11.31
Crawford AuSable	$11.69
Petoskey	$12.19
Marquette	$12.34
Cadillac	$13.00

In the area of cafeteria helper comparisons, the comparisons have similar variations, namely:

Area Districts Starting Wage	
Rogers City	$7.54
Alcona	$8.81
Hillman	$9.21
Posen	$9.42
Alpena	**$9.98**

Area Districts Top Wage	
Rogers City	$ 8.73
Posen	$ 9.42
Alpena	**$10.41**
Alcona	$10.63
Hillman	$10.98

All Survey Districts Starting Wage	
Marquette (elementary)	$5.94
Cheboygan	$7.29
Crawford AuSable	$7.54
Davison	$7.58
Marquette (secondary)	$8.15
Gaylord	$8.20
Carman Ainsworth	$8.29
Traverse City	$8.40
Greenville	$8.78
Alcona	$8.81
Hillman	$9.21
Posen	$9.42
Petoskey	$9.43
Grand Ledge	$9.78
Alpena	**$9.98**

All Survey Districts Top Wage	
Cheboygan	$ 8.29
Rogers City	$ 8.73
Posen	$ 9.42
Davison	$ 9.99
Marquette (elementary)	$10.32
Alpena	**$10.41**
Alcona	$10.63
Greenville	$10.64
Traverse City	$10.84
Hillman	$10.98
Grand Ledge	$11.11
Gaylord	$11.19
Crawford AuSable	$11.69
Petoskey	$12.02
Marquette (secondary)	$15.58

The point is these comparables may include for the other districts the wage increases for the 2002-2003 school year for which Alpena ESP II Support did not receive a pay raise thus far. A conclusion from the comparables, based upon the sample, is that Alpena is far from the lowest paid, is at least in the middle of the pack or somewhat above the middle. The Fact Finder suggests that this wage position came about through a pattern of bargaining over the years whereby the parties have reached Alpena's place in the comparables. There is no indication that there is a need for a catch-up increase because Alpena seems to be at least the middle or above middle of the pack in terms of wages. This only emphasizes that the important consideration is the internal comparisons based upon the internal bargaining history.

The Art Of The Possible

This Fact Finder has emphasized the bargaining history, particularly as affecting the non-instructional groups within the Alpena School District as a principle criteria. In resolving the contract dispute here, in 2000-2001 the District was not faced with the financial challenges that came about because of a modification of the foundation allotment impacted by the State of Michigan's fiscal condition, coupled with a decline in student enrollment. In 2000-2001, the District was willing to give 3% pay raises to the Steelworker Units and the bus drivers for the next four years in return for relief as to health insurance costs by the adoption of the $10.00 co-pay program with the $8.00 reimbursement feature until the last year (2004-2005) of the Agreements. This resulted in savings to the District. The ESP II (Support) group turned down this offer. The result was that the support group, although obtaining a 3% increase for 2001-2002, has gone for over a year and one-half without a pay increase and the District has not attained the benefit of health care cost savings with the increased drug co-pay. This is where the parties find themselves.

Yet, in terms of the art of the possible, it would be difficult for this contract to be settled short of a strike if the support personnel does not receive a 3% pay increase for the next three years. It also would seem appropriate that the contract would go to the end of the 2004-2005 school year, expiring in August 2005, to be equivalent to the ESP II bus drivers, secretaries and cooks/custodians.

There is no basis for a 5% increase because the internal comparables did not receive a 5% increase and the external comparables suggest that there is no basis for any catch-up. On the other hand, what about the savings that the District did not realize because the $10.00 co-pay was not adopted at an earlier time?

The District has a goal of establishing the $10.00 co-pay without any reimbursement. The District likewise wishes to go to a PPO. It would seem that as part of the Agreement, in the spirit of compromise (the art of the possible), that in return for a 3% wage increase retroactive to August 2002 for each of three years (2002-03, 2003-04, and 2004-05), the Association would agree immediately to a $10.00 co-pay with $8.00 reimbursement through August 2004; that beginning in the last year of the contract (2004-05), the Association ESP II Support would go to a straight $10.00 co-pay; that the art of the possible would suggest that there be no me-too with the teachers as in the other contracts except that, if the teachers agree to a higher co-pay, that would automatically apply to the ESP II Support. But the compromise would be that the floor of the co-pay in 2004-05 would be a straight $10.00, regardless of whether or not the teachers negotiate a lower co-pay or a reimbursement plan. In addition, it would seem particularly, when the Blue Cross Community Blues 1 presents similar benefits as the current plan but at a lower cost both to the Board and the participating employees, that this plan should go into effect immediately. In return for accepting this plan, it would seem that the art of the possible would be that, in adopting the Blue Cross Community Blue 1 plan, the District would pay 75% and the employee pay 25%.

There is no basis, based upon the bargaining history, for the District to pay the full cost of health insurance premiums. The bargaining history suggests that this has been a gradual change, recognizing that until 1990-1991 the contribution by the District was only 50%. But the District does need some relief. By going from 60% to 75% and by adopting a program where there is less cost but similar benefits, both the District and the employees benefit. This represents the art of the possible.[1]

The employees do obtain a major benefit in terms of going from 60% to 75% co-pay as to insurance premiums. In return, the District has one bargaining unit now going to a Preferred Provider organization. Though the other groups have a so-called me-too with the teachers, whose contract expires in 2004, as to drug co-pay, considering the fact that the ESP II Support did not agree to the $10.00 co-pay earlier, resulting in two years of no savings to the District, a minimum firm straight $10.00 drug co-pay beginning with the 2004-2005 school year seems a reasonable compromise considering the give and take of bargaining. But even if the ESP IIs back in 2001-2002 had agreed to the $10.00 co-pay, this Fact Finder would still recommend a straight $10.00 co-pay beginning with the 2004-2005 school year because, with increased insurance costs, it is not unreasonable to expect employees to share by agreeing to a $10.00 straight drug co-pay. This represents the trend throughout the state and cannot be overlooked.

Applying the art of the possible, it seems that the tentative agreement which was reached at the bargaining table as to Section 8.1.5 should be in the parties' contract. It was agreed to. And based upon the bargaining history, it should be adopted.

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[1] The Fact Finder recognizes that there are either five or six voc-paraprofessionals in the ESP II Support bargaining unit that do receive employer fully-paid insurance. But this has been the situation for some time, caused by the shortage of voc-paraprofessionals. It has come about from a bargaining history whereby, as to other members of the bargaining unit, there has been the splitting of insurance premiums between the employee and the District. This bargaining history suggests that there is no reason to make this change. However, it is the intention of the Recommendations that the paraprofessionals also share in the $10.00 co-pay for drugs and the change to Blue Cross Community Blue PPO 1.

Similarly, since the Association is obtaining retroactivity and an increased contribution toward health care, that there should be no further changes concerning holidays and death benefits. What has occurred here is that the employees have received a substantial improvement in health care contributions. There is no basis to give benefits for those not participating because, traditionally, health care benefits have not been universal with this unit because of the hours worked of certain employees. Likewise, the District's proposal on sick leave language should be adopted. The Association has not disputed the District's proposal except as to the sick leave accumulation. Although one could argue referencing the external comparables that there are districts that have larger sick leave accumulations, this bargaining has been long and arduous. There is only so much that can be done in one negotiations. The question of increased sick leave accumulation is not a matter that should be addressed in these negotiations. Instead, the 3% increase across-the-board through the 2004-2005 school year retroactive has been accomplished. An increase in health care insurance contributions has been accomplished. This is the best that can be done in one negotiations.

The Board may argue that the 3% for 2003-2004 and 2004-2005 is based on an internal comparison that was offered during better financial times. This is true. The fact that the Fact Finder recommends this package does not suggest that this is the guideline for negotiations that may be taking place in the spring of 2004 with another unit. There are financial concerns now and that seem to be appearing on the horizon. As this Fact Finder has suggested, there is the need for the District to continue to be fiscally prudent.

What is important here is that the District has now received the benefit of the saving of a Preferred Provider organization and also one unit that is now committed to at least a straight

$10.00 drug co-pay irrespective of any me-too. In return for this, the District should be expected to pay the wage package that this Fact Finder recommends based on internal comparables. But other bargaining units should recognize that the ESP II Support unit bargaining unit has been required to compromise, as has the District. And this compromise and the basis for the compromise cannot be overlooked.

It is based upon this analysis that the Fact Finder makes the following recommendations.

RECOMMENDATIONS

1. Wages. In all classifications there shall be a 3% wage increase for the school years 2002-2003, 2003-2004, and 2004-2005. The wage increase shall be retroactive.

2. Effective as soon as possible, members of the bargaining unit covered by health insurance who wish to continue to be so covered shall have their plan changed to the Blue Cross Community Blue 1 plan; that effective as soon as possible, the premium for said plan shall be paid 25% by the employee and 75% by the District.

3. Effective as soon as possible, the co-pay for drugs shall be $10.00 with employees being reimbursed $8.00 on the same basis as the other bargaining units through the 2003-2004 school year; that effective with the 2004-2005 school year, the co-pay will be $10.00 with no reimbursement; that if the teachers increase their co-pay higher than $10.00, then this shall be the co-pay for this bargaining unit. But, in any event, there shall not be a reduction in the straight $10.00 co-pay beginning with the year 2003-2004.

4. The provisions providing for a Blue Cross Community Blue 1 plan and a $10.00 drug co-pay plan, as provided herein, shall also apply to the voc-paraprofessionals.

5. Article 8.1.5 shall be as proposed by the District and as reflected in the Tentative Agreement. Article 11, Leaves of Absence, Section 11.1, Subsections 2 and 3 shall be as proposed by the District with no increase in sick leave accumulation other than as stated in the current contract. All other proposals by the Association are not recommended.

6. The duration of the Agreement shall be from September 1, 2002 through August 31, 2005.

George T. Roumell Jr.
GEORGE T. ROUMELL, JR.
Fact Finder

January 28, 2004