

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING BETWEEN:

BIG BAY de NOC SCHOOL DISTRICT,

EMPLOYER,

and

MERC Case No. L03 A-5028

BIG BAY de NOC EDUCATION ASSOCIATION,

UNION.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Hearing Location: Big Bay de Noc Schools
 Cooks, Michigan

Hearing Date: June 25, 2004

Appearance:

For the Employer:

John H. Gretzinger
District Attorney

Brian T. O'Hara
District Superintendent

Gordon C. Smith
School Board President

Donna Paquette
Finance Director

For the Union:

Sandra M. Walker
MEA Uniserv

Patricia Schwartz;
Paulette Wickham; and
Beth Deacon
MEA Negotiating Team

INTRODUCTION AND BACKGROUND

The Big Bay de Noc School District is a small school system located on the Garden Peninsula in the Upper Peninsula of Michigan. Similar to the Fact Finding Opinions and Recommendations, cited by the parties involving other school districts, the Big Bay de Noc School District is suffering along with many other school districts in the State of Michigan from declining enrollment, a slash in state foundation grant funds, etc. See, e.g., Comstock Public Schools and MEA (Fact Finder Lyons); Alpena Public Schools and Alpena MEA ESP II (Fact Finder Roumell); Willow Run Community Schools and Willow Run Education Association (Fact Finder Oppewall). Gordon Smith, President of the school district, characterized the situation of the Big Bay de Noc School District as dire, being on a death spiral. Mr. Smith testified further that the economic situation for the school district was severe and not only did it impact the school district but he described the school district as the "hub" of the entire community and if the school district collapsed, it would impact the entire community.

The situation at Big Bay de Noc is not dissimilar from what has occurred at other school districts throughout the state. Programs, teachers and employees have had to be reduced because of budget constraints. The cuts in a small district such as this one have a greater impact than in a larger school district, as whole programs at the Big Bay de Noc Schools have had to be eliminated, including band, music, art and industrial education. Mr. Smith and Superintendent O'Hara testified that the programs in the district are operating at a bare-bones level; and, because of the cuts, parents are threatening to send their children to other neighboring school districts which have not had to

make such drastic cuts as Big Bay de Noc has made. This fact finder was struck by the earnestness, albeit at time inflexible earnestness, with which the district Superintendent, President and attorney have approached the issues concerning the health and continuing vitality of the school district.

In the same vein, this fact finder was struck by the earnestness as well as the flexibility that the members of the Education Association showed to the conditions that they and the district as a whole face. This was most graphically illustrated by the voluntary steps the union members have taken concerning the major issue involved in this dispute, i.e., health care. As was testified to by the union representative, Sandra Walker, the health care provider during the period covered by the expired collective bargaining agreement, Set Seg, went out of business in 2002. The union "agreed" to switch to a PPO (Blue Cross Blue Shield) for the 2002 - 2003 school year. When an even more efficient health care program became available in the fall of 2003, the union agreed to switch to MESSA. This switch led to a cost savings to the district of over \$30,000.00. Significantly, this switch to MESSA was done at a time when the contract that is at issue in this fact finding hearing was being negotiated but, obviously, had not been finalized.

It is within this factual backdrop that the issues in this fact finding hearing must be addressed.

BARGAINING HISTORY

If there is a theme that could describe the end result of the negotiating process between the Big Bay de Noc School District and the Education Association, it would be: "So close, yet so far away." The collective bargaining agreement between the parties expired on August 31, 2003. Thus, for almost the past whole year the parties operated without a contract, with the principles of the prior CBA governing the activities of the district and union. During the course of the negotiations that

have gone on, off and on, over the past year, the parties have agreed to all of the terms of a new collective bargaining agreement except for the two basic and critical issues, i.e., wages¹ and health care.

The bargaining history is important to gain an understanding of how these parties got "so close" to a new contract, but were still "far away" from agreement. The first proposal that was presented on behalf of the district took place before the expiration of the contract. On May 20, 2003, the district submitted a proposal that called for "fixed" costs concerning health insurance premiums. Under the district's proposal, health insurance costs would be fixed at the following levels:

9-1-2003	\$ 988.00
9-1-2004	\$1,038.00
9-1-2005	\$1,088.00

Pursuant to this proposal, all costs in excess of these stated amounts would be paid by the employee receiving the insurance coverage. (District Exhibit 7). As to wages, the district's initial proposal called for the steps to be frozen, along with a wage reduction of 2%. This proposal of the district was followed by a second proposal on July 16, 2003. Under this latter proposal, health insurance premiums for the 2003-04 school year would be capped at \$988.00, with the employee picking up any excess cost over that amount. The July 16 proposal differed somewhat from the May proposal, as it called for a re-opener in July, 2004 and July, 2005 to allow for further bargaining regarding

¹ As will be discussed later in this fact finding report, the union took the position that wages was not really an issue in this fact finding, as the union had agreed to the wage package as last proposed by the district in the district's June 11, 2004 version of the settlement agreement. (Exhibit 17). Curiously, the district took the position that the wage package was contingent upon the Education Association's agreement to the district's health care proposal; however, during the course of the fact finding there was very little discussion about the wage issue and what "wage" proposal should be recommended if the fact finder did not accept the district's position on health care. This leads this fact finder to conclude that the "real" issue in this fact finding is not wages, but health care.

increasing the amount the district would pay toward health care costs, with the allocation of the remaining health care costs to the employees. Under this proposal, steps would be frozen but there would only be a proposed 1% reduction in wages. (District Exhibit 8).

On December 19, 2003, after the Collective Bargaining Agreement had expired, the district submitted a new proposal. (District Exhibit 9). In this proposal, the district modified to some degree its fixed cap proposal concerning health insurance. The district's payment toward health insurance premiums would be fixed as follows:

9-1-2003	\$ 988.00
9-1-2004	\$1,062.00 (7.50%)
9-1-2005	\$1,115.00 (7.50%)

Pursuant to this plan all amounts in excess of these amounts would be split on a 50/50 basis by the district and the employee. There was an important caveat along with this proposal which reads as follows:

In addition, the parties shall enter into a letter of understanding that will provide that the District may reopen the Agreement to negotiate changes in the health care plan in the event that the premium increase for the coming year when applied to the anticipated staffing for the next school year would require the District to pay 7.50% more for health care insurance in the upcoming school year than it did in the previous school year. The total cost for health care insurance in any school year is the sum of the health care costs for insurance premiums paid by the District and the cost of payments in lieu of health insurance.²

² In the December proposal, the district changed its position on wages, proposing that step increases be granted for each year of the contract, with no salary increase for 2003-04, but with a 1% increase for 2004-05 and 2005-06. In addition the district proposed an additional increase in wages based on certain contingencies, which the parties agreed were unlikely to happen (increase in gross revenues).

On March 8, 2004, the school district submitted an additional proposal which, as to health insurance costs and wages, was identical to its December proposal. (District Exhibit 10).

After one mediation session failed, the school district filed a Petition for Fact Finding on February 5, 2004. In its Petition for Fact Finding, the district listed the following matters as being in dispute:

- a. Salaries (Salary Grid Redistribution, Salary Step Increases, and Overall Increases);
- b. Language regarding the Federal No Child Left Behind Act;
- c. Health Insurance;
- d. In Lieu Of Payments For Those Not Taking Health Insurance;
- e. Early Retirement Benefits;
- f. Length of the Agreement; and
- g. The School Calendar (Number of Days In The School Year).

On April 27, 2004, the undersigned was appointed by MERC to act as fact finder. A preliminary conference call took place between the parties on May 11, 2004. The following were the issues that were agreed upon to be addressed at the fact finding hearing:

Wages
Health Care
No Child Left Behind

In the conference call, the parties indicated that negotiations were continuing in earnest and the parties, while desirous of setting a date, set the date far enough down the road to allow for ample

opportunity to fully negotiate settlement options. The hearing date was scheduled for June 18, 2004 but ultimately was adjourned for one week to June 25, 2004, at the parties' request, as a result of the intervening events that will be set forth below.

Negotiations between the union and the district's bargaining committee went on during the interim. A tentative settlement agreement was reached between the parties on June 2, 2004. This tentative agreement called for a 2 year agreement, covering the 2003-04 and the 2004-05 school years. On the critical issue of health care, the tentative agreement provided as follows:

A ten (10) percent cap on bargaining member's total insurance package cost over the previous year's premium, with a fifty-fifty (50/50) split on the remaining increase in the year 2004-2005.

The employer shall provide the MESSA PAK described below for a full twelve (12) month period for each year of this Agreement for the bargaining unit member and his/her eligible dependents as defined by MESSA, including sponsored dependents. Should a plan of equivalent benefits become available, the parties will meet and consider such plan.

As to wages, the tentative agreement provided for salary step increases for both years of the contract, and a 1% salary increase for each year of the contract with the potential for a larger increase for the 2004-05 school year, again dependent upon gross revenue receipts. (Exhibit 11). The Education Association ratified the agreement on June 4, 2004.

After the Association had ratified the tentative agreement, the matter was submitted to the District Board for consideration. Apparently, from correspondence exchanged between counsel for the district and the MEA representative, there had been a misunderstanding on the district's part on the parameters of the health insurance issue. Specifically, the school superintendent believed that

the tentative agreement called for a fixed cap on health care costs, when by its terms it did not. In correspondence dated June 11, 2004, the school district's counsel set forth what the superintendent had believed would be the fixed cap provision for health insurance costs as follows:

The Board agrees to provide insurance benefits to bargaining unit members based upon the following:

The Board's cost for the bargaining member's total insurance package shall be capped at \$1,184.50 per month or \$14,209.80 per year (10% over the 2003-2004 premium), with a fifty-fifty split on the remaining costs. (The 2004-2005 cost is \$1,235.36 per month or \$14,824.32 per year. The \$614.52 additional cost is split 50/50, with the bargaining member paying \$307.26 per year. This equates to \$11.82 per pay for those on a 26 pay plan or \$15.36 for those on a 20 pay plan beginning on the first pay of the 2004-2005 school year). (Exhibit 12).

On June 14, 2004, the original tentative agreement as ratified by the Education Association on June 4, without the fixed cap health insurance cost provision, was submitted to the entire school board for a ratification vote. The tentative agreement was rejected on a 3 -4 vote, thus requiring the fact finding hearing to go forward on June 24, 2004. The parties submitted post-hearing fact-finding briefs on July 16 and July 19.

HEALTH INSURANCE

DISTRICT'S POSITION:

The district's position focused more on the general notion of health care costs and health care expenses rather than the traditional and statutory criteria (e.g. comparables) used by fact finders in making recommendations concerning collective bargaining disputes. The district provided four Opinions and Recommendations of other fact finders who have eruditely identified the serious issue that escalating health care costs and escalating health care insurance premiums have posed for

employers including school districts. In each of the four Opinions and Recommendations, the fact finders made recommendations that some of the burden of the increasing health care costs should be picked up by the Education Association members. This fact finder notes that there are a number of significant factual differences between these fact finding Opinions and the factual backdrop involving the Big Bay de Noc Schools. In each of the four Opinions, it was the union (MEA) which was inflexible in its position that the cost of health insurance should be borne totally by the school district. This likely led to a recommendation which differs from this fact finder's recommendation, because this Education Association and these teachers have shown a flexibility in the negotiation process, including the fact that the association voluntarily agreed to three changes in their health care package, including the switch to the MESSA, which saved the school district over \$30,000.00. This is not an inflexible bargaining group, but one which recognizes the precariousness of the school district's position (and ultimately their own positions) and is willing to responsibly move forward to address these challenges.

This fact finder is not unmindful that health care costs have and continue to grow geometrically without anyone taking any real efforts to tackle the root cause of such issues. This fact finder is also concerned about the precarious position that this particular school district finds itself in. Having taken steps to deal with severe cuts in revenues, the school district's President paints a rather bleak view of the school district's future. Mr. Smith may ultimately prove correct (hopefully not) that the school district is in a "death spiral" but this fact finder finds that the school district has failed to demonstrate one of the necessary statutory criteria, i.e., inability to pay, to justify the rejection of the tentative agreement as proposed and ratified by the school Education Association on June 4. Nor are comparables helpful to the district's position.

The school district only introduced one comparable school district in the Upper Peninsula which has adopted the kind of fixed cap that the district "insists" on being the centerpiece of any health care insurance provision in the Collective Bargaining Agreement.³ The school district is the North Dickinson County School District. But as will be set forth in the following section of this report, none of the other comparable Upper Peninsula school districts, which are surely suffering the same or similar cost hardships, have adopted a fixed cap method of computing health insurance payments. Further, from the documents that were attached to the North Dickinson submission, the North Dickinson cap was not the result of a negotiated agreement between the parties but resulted from a board vote after an impasse was declared. (See Exhibit 19). This leads to an analysis of the Big Bay de Noc's hard cap proposal itself.

As has been noted, throughout the negotiating process, the hallmark of the district's health care proposal was a fixed cap. But in the district's zealotry for a fixed cap, the district has failed to recognize in the first instance that its teachers, unlike virtually all of the Education Associations in Michigan, had already agreed to a cap concerning health care. In the contract that had expired in August of 2003, the association had already gone where few other associations had gone in terms of capping and sharing health care costs by the following language found in that contract:

³ As will be discussed at greater length in the section that immediately follows, the school district's position on its fixed cap formula was totally inflexible. As an example of this, prior to the hearing the parties had suggested that this fact finder, after hearing all of the evidence, might act in a mediator capacity to try to assist the parties to reach an agreement. At the hearing, after all of the evidence was introduced, this fact finder made at least two suggestions as to how the health care issue could be resolved. In each instance the union indicated that it would consider alternatives to its proposed method (10%) of capping health insurance costs; however, there was no movement on the part of the school district on any of the suggestions, with the district rigidly insisting that "its" cap had to be the hallmark of any agreement.

F. The Board agrees to provide insurance benefits to bargaining unit members based on the following:

A ten (10) percent cap on bargaining member's total insurance package cost with a fifty-fifty (50/50) split on the remaining increase in the years 2000-2001 and 2001-2002.

EXAMPLE: Total insurance package cost was \$500 - Cost goes up sixteen (16) percent to \$580 - Ten (10) percent would be \$50 which leaves a \$30 balance - The Board pays \$15 and the Association member pays \$15.

Thus, this Education Association had already agreed to the concept of a "cap," demonstrating both an understanding and the resolve to responsibly bear the cost of the increases in health insurance premiums. So, why then was the district so insistent that only a fixed cap formula was the appropriate cost containment method?

The rationale for the school district's position can be gleaned from a letter dated June 13, 2004, from the attorney for the school district to the President of the Big Bay de Noc Board of Education. In recommending a rejection of the tentative agreement ratified by the union on June 4, the attorney set forth reasons why a fixed cap should be implemented:

It should be noted that a cap on the District's insurance payment obligation does not require that all future increases in health insurance costs will be paid for by the teachers, but rather means that the parties will have to negotiate the amount of additional District contribution in subsequent years. I have had caps in many collective bargaining agreements with other municipal entities for years. In those entities the unions have learned that the amount of new money that can be put into a contract in any year is divided up into health care costs and salary increases, and that by agreeing to purchase a reasonable level of insurance allows more of the available funds to be directed towards salary increases. A cap ensures that true collective bargaining occurs in future years, since the union needs to secure the employer's agreement to pay more of the health care costs and stalling in the bargaining process is no longer to the advantage of the union.

The gist of this rationale is to change the bargaining position of the parties, by means of a fixed cap on health insurance costs, giving the employer leverage which the employer does not have pursuant to the current and past negotiated contracts. There is a fundamental problem with this rationale. The negotiating posture currently in place was one that was "bargained for" and "agreed upon" by the parties. To recommend a proposal such as this on the part of a fact finder would fundamentally alter the method of collective bargaining for this school district and this Education Association. In one of the other Fact Finding Reports and Recommendations, cited by the school district as supporting its position, fact finder Lyons specifically rejected the notion of a fundamental change being recommended by an outside third party to a contract, stating:

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.

* * *

This fact finder is very uncomfortable modifying the traditional method of collective bargaining unless there is a total accord by the parties.

Cornstock Public Schools and Michigan Education Association (Fact Finder Lyons) at p 8. This fact finder agrees with the wisdom of Fact Finder Lyons. The fact finding process should not become the means of fundamentally changing the philosophy of a bargaining history between parties, as only the parties themselves can make such fundamental change. For this as well as the other reasons set forth more fully above, the fixed cap position of the Big Bay de Noc School District is not well taken.

ASSOCIATION'S POSITION:

Much of the association's position has been set forth in the discussion above, to contrast it with the district's position. To reiterate some of the basic positions taken by the union, the fact finder notes a spirit of give and take not demonstrated by the district, first of all, by the union's agreement, even without a Collective Bargaining Agreement, to change insurance providers at a net savings to the school district. Further and equally importantly, the association had already agreed in its prior Collective Bargaining Agreement to the concept of a cap, which is exactly what the school district wanted and had obtained, only it was not the kind of cap (fixed) that the district now wants. As was remarked earlier - so close, yet so far away.

When the association's position is examined in light of the traditional, statutory standards for fact finding, particularly in light of the fact that the association had already agreed to a cap and a 50/50 split of costs above and beyond the cap, the association's position is compelling. The comparables as set forth in Union Exhibit 1, both as to Contiguous Districts and as to the Delta Schoolcraft ISD and similar Upper Peninsula Membership show that only two other districts, besides Big Bay de Noc, have caps on insurance costs and in one instance (Escanaba) the cap is as to dental premiums only. While a rigid adherence to comparables may not always project what the trends are in collective bargaining, use of comparables was a method authorized by the legislature, as demonstrating what similarly situated districts with the same or similar problems as Big Bay de Noc (reduced revenue and escalating insurance costs) are doing to offer guidance to other school districts

and fact finders generally on approaches to addressing important issues in the collective bargaining process. In this instance, the comparables more than suggest that the union's position is the better position for adoption by the parties.⁴

The other criteria that fact finders also are statutorily obligated to look at, ability to pay and bargaining history, as set forth above, also favor the union's position. The union posits in its closing brief that ability to pay is not an issue, as the general fund balance averages around 12% plus, according to the audited district budget summary. (District Exhibit 3). Even more compelling, as noted above, is bargaining history as well as the history of the activities of the union generally. Pursuant to bargaining history, the union has already agreed to the concept of a cap and no evidence has been introduced to demonstrate a need to alter that cap that is in place and replace it with a fixed cap. Further, this union has demonstrated by its actions, outside the collective bargaining process, a willingness to look at the larger picture and agree to change its health care coverage in its best interest and in the interest of the school district as a whole.

WAGES

The issue of wages will only be treated briefly in this report. This fact finder finds that the district was using wages as leverage. If the association would not agree to its fixed cap on health care costs, the district would not agree to the modest raises that were part of the proposal as ratified by the association. Whatever the wisdom of such an approach, since this fact finder has found that

⁴ Although for reasons that will be explained, the comparables regarding wages will not be set forth or discussed at length in this report, the Education Association's position in comparison to other comparable school districts is even more graphic than the position concerning health care issues. The Big Bay de Noc teacher's wages both as to steps and pay levels generally is at the low end of the spectrum as compared to other districts.

the district's approach to the health care issue is seriously flawed, the wage increase as proposed in the proposal ratified by the union on June 4, 2004 is appropriate. This recommendation is even more compelling when the comparables (Association Exhibit 14) are reviewed, which show that this teacher group is at the low end of the spectrum on virtually every level.

RECOMMENDATION

Because the union's position in this matter is clearly better both as to health care costs and wages, this fact finder recommends in toto adoption of the proposal as ratified by the union on June 4, 2004, which is set forth, as to these two issues, as follows:

F. The Board agrees to provide insurance benefits to bargaining unit members based on the following:

A ten (10) percent cap on bargaining member's total insurance package cost over the previous year's premium, with a fifty-fifty (50/50) split on the remaining increase in the year 2004-2005.

The employer shall provide the MESSA PAK described below for a full twelve (12) month period for each year of this Agreement for the bargaining unit member and his/her eligible dependents as defined by MESSA, including sponsored dependents. Should a plan of equivalent benefits become available, the parties will meet and consider such plan.

Bargaining unit members electing health insurance shall receive Plan A of the MESSA PAK which shall include the following benefits:

PLAN A
SCI Rev. 100/200 deductible - 5/10 Rx
5,000 AD&D
100x/90/90 \$1,000 max
VSP 3 Plus

Bargaining unit members not electing health insurance shall receive Plan B of the MESSA PAK, which shall include the following benefits:

PLAN B
\$10,000
100x/90/90 \$1,000 max
VSP 3 Plus

Cash Option: Those employees qualifying for the Plan B package under this master agreement who choose not to take the package shall be eligible to take up to \$2,700 per year in insurance options and/or cash in accordance with the IRS tax code. Cash option for part-time employees will be prorated by actual hours and/or days worked.

Premium & Deductible: The Board shall make payments of insurance premiums for each member of the bargaining unit while employed by the district for full twelve (12) month coverage commencing September 1 and extending to August 31. Premium on behalf of each member of the bargaining unit shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

G. All insurance premiums for part-time employees will be prorated by the actual hours and/or days worked. Each person covered under this proposal will further sign a statement attesting to the fact that there is no double coverage on health and medical insurance.

H. Changes in family status shall be reported by the employee to the office within thirty (30) days of such change. The employee shall be responsible for repayment of any overpayment of premium made by the Board in his/her behalf for failure to comply with the section.

I. Salary Steps.

(1) 2003-2004. All employees shall be granted advancement on the salary schedule for 2003-2004.

(2) 2004-2005. All employees shall be granted advancement on the salary schedule for 2004-2005.

J. Salary Increases

(1) 2003-2004 Salary Increases. The salary schedule shall be increased by 1%.

(2) 2004-2005 Salary Increases. The salary schedule for the 2004-2005 school year shall be increased by 1.00% as of the beginning of the 2004-2005 school year. In the event that the District received gross revenue during the 2004-2005 school year in an amount at least 3.00%, an additional 1.00% will be added to the 2004-2005 salary schedule and paid retroactively to teachers employed for the 2004-2005 school year. In the event that the District received gross revenue during the 2004-2005 school year in an amount at least 5.00% more than it receives in the 2003-2004 school year, an additional 2.00% will be added to the 2004-2005 salary schedule and paid retroactively to teachers employed for the 2004-2005 school year. The amount of gross revenue received in 2003-2004 and 2004-2005 shall be determined by the District's annual year-end audit.

It is the further recommendation of this fact finder that to the extent that the step increases were not given and to the extent that the salary increases were not given for the 2003-2004 school year that such step increases and such salary increases be applied retroactively.

Respectfully Submitted,



John A. Obee, Fact Finder

Dated: August 4, 2004