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

FACT FINDING

In the Matter of the
Fact Finding Between:

MUSKEGON HEIGHTS SCHOOL DISTRICT

-and-

MERC Fact Finding Case No. L02 G9008

MICHIGAN AFSCME COUNCIL 25
and its Local 201

FACT FINDER'S REPORT,
FINDINGS OF FACT AND RECOMMENDATIONS

APPEARANCES:

FOR MUSKEGON HEIGHTS SCHOOL DISTRICT:

Theodore Williams, Attorney
Dr. Edmond Beverly, Superintendent
Dana Bryant, Asst. Superintendent, Business
Carrol Wilson, Director, Human Resources

FOR MICHIGAN AFSCME COUNCIL 25:

Joel Glutzki, Staff Representative
Jerome Buchanan, Staff Representative
Mike Neitzel, Staff Representative
Sophia Kirks, Chapter Chair
Dorothy Johnson, PE Aide
Shirley Demyers, Library Aide
Johnnie Mae Smith, Sped. Aide

Background

Michigan AFSCME Council 25 represents approximately 39 aides employed by the Muskegon Heights School District. The last collective bargaining agreement covering the period October 16, 1999 to October 15, 2002 between the parties expired on October 15, 2002. Thus, for a period of two years, the parties have been without a collective bargaining agreement.

The parties commenced bargaining for a new agreement at approximately the time the 1999-2002 agreement expired. The parties did engage in mediation and reached impasse.

As a result AFSCME Council 25 petitioned for Fact Finding, and the undersigned was appointed the Fact Finder.

By the time the Fact Finder arrived at the School District for hearing on December 3, 2004, two issues remained between the parties -- wages and health care insurance. Concomitant with these issues is the length of the contract.

At the time of the hearing, the District's position on the issues in dispute was no wage increase and requiring employees to contribute 50% of the cost of the premium for health insurance.

Council 25's position was:

> The Union proposes the following as an attempt to settle negotiations.
>
> Maintain current contract except for previously agreed to T/A's and the following:
>
> The Employer will pay 100% of the cost of the monthly premium for the MESSA Supercare 1, single subscriber health insurance.
>
> Wages. A 0% across the board increase for the first year of the agreement. In lieu of a wage increase the employees will receive a one time $350.00 signing bonus.
>
> A 2% across the board increase effective October 15, 2005 and a me, too agreement for the third year, to read as follows: AFSCME Local 201.06 bargaining unit employees (Muskegon Heights Aides) will receive the same across the board increase as the MEA bargaining unit employees receive effective October 15, 2006.

The Criteria

Fact Finders, in attempting to make recommendations, utilize certain criteria in evaluating the parties' position. The criteria have been recognized by the legislature of the State of Michigan when enacting Act 312 of Public Acts of 1969 in reference to interest arbitration involving police and firemen. Section 9 of that Act sets forth the criteria to be followed by Act 312 arbitrators:

> 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 employer to fund the award, and comparables, both internal and with other similarly situated public and private employers in the geographical area involved.

The criteria set forth in Section 9 are just that - guides. Act 312 arbitrators and fact finders utilize this criteria as applied to a particular situation. No one criteria is controlling, although in some situations, as is the case with Muskegon Heights School District, a particular set of criteria gives guidance for a recommendation.

It is noted that in Section 9(h), the statute refers to criteria used by fact finders, not enumerated in Section 9. Among the criteria utilized by fact finders is the bargaining history of the parties, both past and current, as well as the "art of the possible," namely, what is a possible settlement between the parties recognizing the give-and-take of negotiations. 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, as a strike deadline loomed the parties would attempt to compromise in order to avoid a disruption in public service and loss of employee income. 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.

As enumerated in Section 9, there is the comparable criteria. This means that both external and internal comparables must be studied, comparing similarly situated employees of similar employers and the pattern of negotiations among the employees of the employer. This comparable criteria, coupled with the bargaining history, the District's ability to fund the recommendation herein, and the art of the possible, leads the way to a recommendation in the instant situation.

Ability to Pay

Muskegon Heights School District is located in Muskegon County, adjacent to the City of Muskegon. It has 8 classroom buildings, namely, a high school, a middle school, and six elementary schools. The history of student enrollment since the 1994-95 school year is as follows:

Year	Student Enrollment	Change
1994-95	2661.6	Base
1995-96	2614.5	-47.1
1996-97	2675.1	60.6
1997-98	2547.0	-128.1
1998-99	2445.2	-101.8
1999-00	2387.4	-57.8
2000-01	2289.6	-97.8
2001-02	2264.1	-25.6
2002-03	2298.7	34.6
2003-04	2243.4	-55.3

For the school year 2004-05, there are 30 fewer students than in 2003-04. The significance of this declining enrollment is that 71.9% of the District's budget ($17,254,024) comes from State Aid or foundation grants. For the 2004-05 school year, this meant that for each child in the District, the District would receive approximately $7100 from the State of Michigan. Thus, when the District loses 30 students, this impacts the District's budget by about $210,000.

The District has a work force as follows:

Staffing Summary:

Teachers	145.0
Adult/Community Ed Teachers	3.0
Head Start Staff	11.0
Aides	39.0
Administrators	18.0
Administrative Support	3.0

Clerical	20.0
Custodial/Maintenance	20.0
Bus/Transportation	8.0
Other Staff	21.0
Total	288.0

Without any changes in health care or any increase in wages for any of the District's work force, as of October 18, 2004, the District projected the following three year fund balance:

	Year Ended June 30, 2005	Year Ended June 30, 2006	Year Ended June 30, 2007
Beginning Fund Balance	$1,300,000	$1,100,000	$207,000
Decrease in revenue	200,000		
Teacher Longevity		280,000	280,000
Hospitalization (estimated 18% increase)		613,000	723,000
Retirement (estimated 1.88% increase)		238,000	242,000
Ending Fund Balance	$1,100,000	$ 207,000	(796,000)

Assumptions:
* Teacher longevity is paid.
* Hospitalization is assumed to increase 18% per year
* Retirement is assumed to increase 2% per year
* Revenues are assumed to remain the same
* Enrollment is assumed to stay the same

Of particular concern is the fact that between the 2004-05 school year and the 2005-06 school year, the District's fund balance of $1,100,000 will drop almost $900,000. By the school year ending June 30, 2007, the District will be in deficit financing and, based on Michigan law, will be required to set forth a deficit reduction program. The District is in a financially difficult position that impacts its ability to pay.

What makes the District's finances tenuous is its reliance on state aid, coupled with the fact that the District has an eleven year history of declining enrollment which impacts on the amount of state aid the District will receive. With the District's reliance on state aid and declining enrollment, it is in a "catch-22" position. Furthermore. though this Fact Finder has noted that the District receives approximately $7,100 in state aid from the state of Michigan for each child enrolled, with the state's financial crisis there is a possibility that in the 2004-2005 school year the state may reduce this amount. This means that the District's budget, based upon a $7,100 state aid per student, could be thrown out of kilter, accelerating the projected deficit. Any fact finder, including this Fact Finder, coming into the District must recognize the tenuous financial situation of the District. Ability to pay is a major factor in considering the recommendations.

The Bargaining History

Bargaining history reveals that the District has been hemmed in by its limited financial resources and has been concerned about increasing health care costs. For this reason, for two years the parties have not been able to reach an agreement. When one considers the bargaining history with the art of the possible, what becomes clear is that the recommendation must be modest. Two years without a contract and a tenuous financial picture, which is tied in to the state's financial position, emphasizes that the recommendation must be modest and recognize the need for cost containment.

Health Care

The bargaining unit currently has single member coverage through MESSA which is running the District in excess of $850 per member at the present time. Last year alone, without bargaining, the increase in the MESSA rate was 18%. In other words, if the MESSA rates continue based on the current experience of 18% per annual increase, the District, faced with double digit insurance increases, will have great difficulty in continuing to be a viable economic unit or having the ability to provide wage increases for its employees.

The District has discovered that if it changes carriers from MESSA, it can obtain reduced premiums – meaning that the District can provide members of the unit with health care coverage without requiring a premium co-pay and still be able to contain its health insurance costs.

The facts reveal that there are carriers such as MEBS, which is sponsored by several unions, Blue Cross-Blue Shield, and Priority Health, who have lower rates than those of MESSA. In fact, rates have been obtained from MEBS that are substantially lower than the current rates of MESSA and yet provide comparable benefits, although the rates quoted to the Fact Finder would suggest a higher drug co-pay.

In the area of health care, the external comparables are most interesting and reveal as follows:

Muskegon Hts. Schools
MESSA - Supercare 1 Single Subscriber. For employees who work 6 hours or more per day, the Employer will pay 100% of the monthly premium.

Dental - Yes
Vision - Yes
LTD - No
Life Insurance - YES

Fruitport School District
MESSA - Revised Supercare 1: For employees who work 23 or more hours per week, the Employer will pay 75% of the monthly premium. For employees who work 23 hours to 12 hours per week, the Employer will pay 75% of the premium of the single subscriber rate.

Dental - Yes
Vision - Yes
LTD - No
Life Insurance - Yes ($15,000 with AD&D)

Albion Public Schools
$1,750.00 allotment per year for reimbursement. Can be used for optical, dental, medical, chiropractic and prescription drugs.

LTD - No

Hopkins Public Schools
Health Insurance - No

> Dental/Vision: The Board will pay 80% of the cost for Dental/Vision coverage for all employees who regularly work 32 or more hours per week. If the employee is regularly scheduled for 25-23 hours per week, the Board will pay 67% of the coverage cost. For employees working 10 to 25 hours per week, the Board will pay 50% of the coverage. There will be no Board paid coverage for employees working less than 10 hours per week.

This suggests that there are school districts, such as Fruitport, that are requiring their employees to pay a portion of the premiums. The family plan in Fruitport is a MESSA plan with 75% paid by the employer and 25% paid by the employee. Albion pays only $1,750 toward health insurance. Hopkins provides no health care insurance. It is true that the other bargaining units at Muskegon Heights have MESSA coverage. Yet, as illustrated by the above comparables, particularly when one notes Hopkins, there are districts which either do not provide health insurance or provide for employee co-pay. The aim of the bargaining unit here was not to have a co-pay toward premiums. This has influenced the Fact Finder's Recommendations.

Quotes have been received from at lease one carrier (MEBS) that are more competitive than MESSA. When faced with an 18% increase in premiums, declining enrollment affecting state aid, and a reliance on state aid from a state itself in fiscal distress, one can understand the desire of the District to switch to another carrier.

To put it another way, the District is prepared to provide health care insurance to the members of the bargaining unit but wishes to have some cost containment which can be furnished by a carrier other than MESSA. This factor cannot be ignored when considering the art of the possible.

Wages

The fiscal situation in Muskegon Heights is such that the traditional approach to wages cannot be considered. One must look at the District's position going into Fact Finding. The District has proposed no wage increases and a 50% contribution toward health care insurance premiums. The District is faced with a shrinking fund balance. Yet these employees have been without a pay raise for two years.

The external comparables as to wages are as follows:

Muskegon Hts. Public Schools

	Aide 1*	Aide 2*	Aide 3*
Wages	$8.55-$9.19	$8.69-$9.34	$8.98 to $9.62
Longevity	10-14 years, $.20 cents per hour 15 years or more, $.25 cents per hour	10-14 years, $.20 cents per hour 15 years or more, $.25 cents per hour	10-14 years, $.20 cents per hour 15 years or more, $.25 cents per hour

*Aide 1 - Classroom Special Education Aide/Athletic Aide/Hot Lunch Room Aide
*Aide 2 - Hot Lunch Room Aide
*Aide 3 - Library Aide/Hall Aide

Albion Public Schools

	Level 1	Level 2	Level 3	Level 4
Wages	$8.16	$8.78	$9.49	$10.09
Longevity	$10.49 after 10 years	$10.79 after fifteen years	$11.02 after twenty years	$11.40 after twenty five years

Fruitport School District

	Step 1	Step 2	Step 3	Step 4	Step 5
Wages	$9.43	$10.18	$10.55	$10.93	$11.32
Longevity			N/A		

Hopkins Public Schools

Wages	Start	After 90 days	After 1 year	2 years	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years
Para-professionals	$8.10	$8.56	$9.02	$9.19	$9.33	$9.50	$9.66	$9.87	$10.08	$10.24	$10.39	$10.54
Instructional Assistants	$9.97	$10.20	$10.56	$10.73	$10.90	$11.07	$11.26	$11.43	$11.63	$11.78	$11.97	$11.97

In viewing these comparables, one could argue, when compared with Albion, Fruitport and Hopkins Public Schools, the aides in those districts are being paid more than the aides in Muskegon Heights Public Schools. However, in Fruitport, the employees are sharing in health insurance premiums. Nor are the employees in Albion having the full health insurance premium paid. And in Hopkins, the employees are not receiving any health insurance. When the fact that the District is paying a single subscriber for the bargaining unit, then it is suggested that, in terms of total dollars, the District is competitive with the above named comparables. Having noted this fact, the Fact Finder also believes that though the District cannot afford retroactivity because of its financially precarious position, the District must provide some wage increase in order to keep its employees competitive.

The Recommendations

Medical Insurance

Other than MESSA, there are three major providers of medical insurance in western Michigan, namely, Blue Cross-Blue Shield, MEBS, and Priority Health. For a single subscriber, based upon a 10/20 drug co-pay ($10 for generic, $20 for brand name), the District has received a quote of around $350-400 monthly. The District has indicated that, for the 2004-05 contract year, it would commit to a monthly cap of $750 for health care insurance for its employees. Listening to the parties, it seems that the Union is concerned about keeping the drug co-pay low, although the Fact Finder believes that the present $2.00 co-pay is unrealistically low. If the single subscriber rate is as quoted, around $400, it would seem that the remaining $350 could be used to buy a drug co-pay card lower than 10/20. This is something for the parties to negotiate.

In other words, the Fact Finder will recommend a $750 monthly cap for insurance costs with the District and the Union to negotiate a plan, whether it be single, two-person or family, provided it be with one of the three carriers mentioned, MEBS, Blue Cross-Blue Shield or Priority Health, but not MESSA. The choice of carrier will be up to the parties. Once that plan is in place, it will be the plan, whatever it may be, with the District paying up to $750 monthly. It is intended that there will be no premium sharing by members of the unit. Thus, the plan for the 2004-2005 contract year must come within the $750 monthly allotment.

This approach allows the parties to choose a carrier other than MESSA. MESSA is not recommended because it has become uncompetitive. There are other carriers in western Michigan who can provide comparable benefits and thus institute cost containment for the District. It is important that these insurance cost containments be realized in order to provide financial stability to the District so as to enable it to provide wage increases for the employees in the future.

The recommendation that follows intends that the bargaining unit can choose an individual plan, a two-person plan, or a family plan, but whatever policy is chosen shall be the same for all employees in the unit. The policy may have a different drug card than that upon which the quote was obtained, but the maximum premium to be paid by the District in 2004-2006 will be $750 monthly. The policy chosen will be the policy that will be utilized in the 2005-06 contract year and any increase in the premium for the 2005-2006 contract year will be borne by the District.

The employees do not want to pay co-pay insurance premiums. This being the case, and recognizing that the District wishes to have cost containment, the solution is a $750 monthly cap on any health care insurance premium providing benefits at whatever level this cap will allow and with a reasonable drug co-pay.

For the 2004-05 calendar year, the District is prepared to spend $750 per month for each employee toward health care insurance. The employees do not wish to contribute to the cost of the premium. The parties have received a quote from MEBS of $739.00 for a family plan and somewhere around $400 for a single plan. Presently, for a single plan, the District is paying approximately $800 per month for coverage from MESSA. The bid from MEBS includes a drug card with a co-pay of $10 for generic drugs and $20 for brand name drugs. If the District continues to pay for a single plan, under the MEBS plan, the cost would be approximately $400 per month. The district is willing to pay $750 per month. Thus, under the recommendation that will follow, the Union can go back to MEBS or a carrier other than MESSA and either choose to have a family plan for everyone in the unit with a 10/20 drug card, or continue with the single plan and use the additional $300 to receive a bid for coverage with a drug card having a lower co-pay.

It appears that MESSA included a dental and vision package. Under the recommendation, the same dental and vision benefits will continue with the District having the right to change carriers. In other words, whatever dental and vision benefits employees are now receiving shall be continued by the District, but the District has the right to change carriers so long as the benefits are the same.

The Fact Finder came away with the impression that the staff representatives of Council 25 servicing this unit are most knowledgeable about health care premiums. The intent of the recommendation is that the unit will decide which plan it wants, whether it be single or family, so long as the plan falls within the $750 per month the District is allotting for health care insurance premiums, and is not a MESSA plan. The plan can be either a single plan for all employees or a family plan for all employees. Once this plan is selected, it will be the plan for the duration of the contract. If the premium cost rises in the second year, the District will assume the increased premiums.

True, the District is paying less for health care insurance for 2004-05 than it is currently. But in order to provide some pay raise and to help stabilize the District's financial situation, this approach must be used. Under this approach, employees, if they choose, can purchase a drug card that has a lower co-pay than the quoted $10 and $20 co-pay. The District cannot continue to pay 18% annual increases in health care insurance and remain financially viable.

It is also the intention that whatever policy is selected, it shall cost no more than $750 per month for the 2004-2005 contract year. In other words, the unit cannot choose a more expensive policy and pay the difference. The policy will be controlled by the $750 limit. The recommendation also provides, and it is implicit in the recommendation, that MESSA will not be the carrier. The recommendations as to health care and wages are based upon this condition.

Wages

The recommendation will also provide that the contact will expire on October 15, 2006. There will be no wage increases for 2002-03, 2003-04, and 2004-05.

Effective upon ratification, each member of the bargaining unit shall receive $150 signing bonus. The $150 bonus will give employees a stipend that covers the 2004-05 school year.

Beginning on October 15, 2005, there will be a 1% wage increase across-the-board. The wage package is modest. But this is all the District can afford at the present time. There is just no money. It is as simple as that.

The Fact Finder readily acknowledged that this is a modest wage increase. But the District is on an economic disaster course unless the District can stabilize its finances. Certainly, with this recommendation, and assuming that other bargaining units will recognize the financial crisis the District is facing, this bargaining unit by October 2006 presumably will be able to negotiate some further wage increases for the contract that follows the contract expiring October 15, 2006. This is a little over a year and one-half away. The recommendation gives the District breathing room financially. And with such a short period of time before the next contract is to be negotiated, the unit will have the opportunity to negotiate for further wage increases.

But, today, in December 2004, this is not possible. This explains this recommendation (the art of the possible). The alternative to the bargaining unit in not accepting this recommendation is potentially having the District, after further bargaining, impose a last best offer with a 50% health insurance premium co-pay and no wage increase. This is the realism of the situation. This explains why a modest wage increase with no retroactivity and protecting the health insurance with no premium co-pay is realistic and within the art of the possible.

As pointed out, the alternative is to continue bargaining, reach impasse again after this Fact Finder's Report, and the bargaining unit ending up with something less than is recommended in this Report. From the District's standpoint, the District should accept this Report because it gives the District breathing room to attempt to revamp its budget and projections so that, in the future, further increases can be negotiated. Hopefully, by the time October 2006 rolls around, the financial picture at Muskegon Heights will be more promising.

There has to be certain realism in this situation. Both parties will lose if this Fact Finding Report is not adopted by both parties.

In conclusion, the Fact Finder was most impressed by the advocates for both parties in terms of their presentation and explanation of the issues both when the Fact Finder arrived and at the end of the hearing.

The recommendation that follows is based upon the above analysis.

RECOMMENDATIONS

1. As soon as possible, the District shall change carriers from MESSA to another carrier at a benefit level selected by the Union provided, however, that the District's premium cost will be limited to $750 per month for the 2004-05 contract year. For the 2005-06 contract year, the District will pay any increased premium cost.

2. The contract will be from October 15, 2002 through October 15, 2006.

3. There will be no increase in the base wage rate for the 2002-2003, 2003-2004, and 2004-2005 contract years.

4. There will be a one-time $150.00 bonus paid to each member of the bargaining unit upon ratification of the contract by the bargaining unit.

5. Effective October 15, 2005, there will be a one percent (1%) increase in the base wage rate.

George T. Roumell

GEORGE T. ROUMELL, JR.
Fact Finder

December 8, 2004