

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE
FACT FINDING BETWEEN:

WHITTEMORE-PRESCOTT AREA SCHOOLS

CASE NO. L-02J 3002

-and-

WHITTEMORE-PRESCOTT EDUCATION
ASSOCIATION/MEA-NEA

FINDINGS AND RECOMMENDATIONS

APPEARANCES:

FACT FINDER:

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FOR THE EMPLOYER

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INTRODUCTION

Pursuant to Section 25 of Act 176, Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding hearing was held regarding matters in dispute between the above parties. The hearing commenced at 10:00 a.m. on September 24, 2004 at the Whittemore-Prescott Area School's facilities in Prescott, Michigan. It was concluded that same day. Both parties submitted post-hearing briefs; the Union's on October 29, 2004 and the Employer's on November 10, 2004. The matter is now ready for the Fact Finder's report and recommendations.

PRELIMINARY COMMENTS

This Fact Finding was initiated by a Petition filed by the Union on April 6, 2004. Prior to the filing of the Petition, one (1) mediation sessions were conducted by Mediator William Barushko; on February 11, 2004. The parties have negotiated extensively and, but for the identified issues below, the remainder of the collective bargaining agreement has been tentatively resolved.

At the hearing, neither party presented any lay or expert witnesses. Indeed, most of the underlying facts surrounding this dispute have been agreed upon by the parties or, at least, have not been seriously challenged. Both parties have supplied the Fact Finder with documentation in the form of three binders of extensive Exhibits and have supplemented the record with post-hearing briefs.

ISSUES

The following issues were identified and placed before the Fact Finder for review and recommendation:

1. Health Insurance
2. Wages and Retroactivity
3. Longevity
4. Binding Arbitration
5. Designated Staff Restrooms

The Union raises a sixth issue involving an increase in the amount the monthly cash payment made by the District to employees who opt out of District- provided health care insurance. The District, on the other hand treats the issue as part of the overall health insurance dispute. A review of the Petition for Fact Finding reveals that this issue was not specifically contained as an "unresolved issue in dispute". The Fact Finder will, nevertheless, address the issue as part of his Report and Recommendations.

BACKGROUND

The Whittemore-Prescott Area Schools (hereinafter "the District") is located in Iosco and Ogemaw counties; near the northeast tip of the lower peninsula. From 1994 until the present, the District has experienced a fall pupil count of a high of 1,557.32 in 1996 to a low of 1,336.00 in 2004. From 2003 to 2004, the District lost 61.28 students or a change of -4.38%. In 2004, the pupil count for state aid purposes was 1,339.00. ***Employer Exhibit 6.*** Pursuant to Section 20 of the School Aid Act, the District will receive \$6,700.00 per pupil membership for 2004-2005. This amount has remained unchanged for the last two school years. ***Employer Exhibit 7.***

In 2002, the local property tax revenue was \$840.00 per student. ***Employer Exhibit 7.*** The total revenue per student in 2002 was \$8,641.00. ***Employer Exhibit 8.***

At the end of the 1995-1996 year, the District had a fund balance of \$195,259.00. Despite an overall loss of students and the stagnant state aid since that time, the District's fund balance has steadily improved to the point that at the end of the 2002-2003 year, the District maintained a general fund balance of \$2,558,665.00. ***Union Exhibit 1-G, Employer Exhibit 10.*** Parenthetically, at the beginning of the 2002-2003 year, the District's general fund balance was \$2,129,426.00 which demonstrates a \$429,239.00 (4.83%) improvement during the course of the year. ***Employer Exhibit 10.*** The \$2,558,665.00 represents a fund balance of 25.16% for the 2002-2003 year. ***Union Exhibit 1-G.***

The Union is the exclusive bargaining representative of all tenured and probationary teachers, guidance counselors and professional librarians employed by the Whittemore-Prescott Area Schools. There are approximately 87 employees in the certified bargaining unit. ***See Petition for Fact Finding.***

COMPARABILITY ISSUES

The parties have presented the Fact Finder with their respective lists of proposed comparable school districts. The parties agree that the following school districts are comparable:

1. Hale
2. Arenac-Eastern
3. Tawas
4. Oscoda
5. West Branch-Rose City
6. Standish-Sterling

The Union further proposes that the following school districts are also comparable:

7. Bangor Township
8. Au Gres Sims
9. Pinconning
10. Essexville-Hampton

The District, on the other hand, proposes that the following school district from the Standard and Poors Evaluation Services "peer group" are also comparable:

11. Baldwin Community
12. Cassopolis Public
13. Farwell Area
14. Forest Area
15. Hart Public
16. Kaleva-Norman-Dickson
17. White Cloud Public

Geographically, one can easily conclude that the agreed-upon school districts are comparable. Hale, Tawas, Arenac Eastern, Standish-Sterling and West Branch-Rose City are all contiguous to the District. While not contiguous to the District, Oscoda is within a reasonable distance to the northeast and is otherwise contiguous Hale and Tawas. Accordingly, the Fact Finder considers the agreed upon districts as comparable.

On the other hand, the Fact Finder is not persuaded that the school districts that comprise the District's "peer group" are, in fact comparable. I note, in particular, the Employer's argument that two criteria to be considered when determining comparability are "proximity and a statistical or analytical approach". *Employer's Post-Hearing Brief, page 1*. However, none of the peer

group school districts are contiguous to the District and, in fact, none of them are within a reasonably proximate in distance. Three of the peer group districts (Forest, Marion and Farwell) are located in mid-Michigan. The Kaleva-Norman-Dickson and Baldwin school districts are located near the western shore of the state while the Cassopolis school district is located in the extreme southwest corner of the lower peninsula. Moreover, it is unclear to this Fact Finder how these districts are "statistically" or "analytically" comparable. The "socio-economic and other data" utilized by the Standard and Poor's Evaluation Services are not identified in the District's exhibits and the use of peer group "averages" in the Employer's statistical analysis makes it difficult, if not impossible, to obtain an understanding whether any one peer group member is truly comparable to the District. For these reasons, I am not inclined to consider the District's "peer group" as being truly representative of the District.

By the same token, I am persuaded by the District's argument that the Union's choice of Pinconning, Au Gres-Sims, Bangor Township and Essexville-Hampton are not necessarily comparable to the District. Both Bangor Township and Essexville-Hampton are located significantly south of the District, are on the opposite side of the Bay City schools and are on the Lake Huron shoreline. The fact that these districts encompass lake front property and are comprised of a significant number of vacation and second homes leads me to believe that they are not statistically comparable to the District. Similarly, the Pinconning and Au Gres-Sims school districts, while geographically closer to the District, do not compare either financially or statistically. Moreover, none of the Union's additionally proposed school districts are located in the Iosco intermediate school district. Accordingly, I am not persuaded that Pinconning, Au Gres-Simms, Essexville-Hampton and Bangor Township should be considered as comparable school districts.

Therefore, the comparable school districts for purpose of consideration by this Fact Finder are:

1. Hale
2. Arenac-Eastern
3. Tawas
4. Oscoda
5. West Branch-Rose City
6. Standish-Sterling

ISSUE 1 - HEALTH INSURANCE

Article III, Section D of the current collective bargaining agreement provides:

The Board will pay $\$735.18 + 9\%$ (\$801.35) per month towards the cost of the employer's health care insurance for the 2002-2003 school year. The Board shall payroll deduct the employee's cost of the health insurance premium rate using the cafeteria plan in place.

The Union notes in 2002-2003, the actual premium cost for health insurance that year was \$852.55 per month resulting in a cost to the employee of \$51.12 per month.

At the end of the 2002-2003 school year, the parties commenced negotiations toward a new contract. The Union contends that if above formula had been applied to the 2003-2004 year, the District would be responsible for no more than \$929.28 monthly ($\$852.55 \times 1.09 = 929.28$). The actual premium cost for 2003-2004 was \$1,031.26 resulting in a premium obligation for the employee of \$101.98 per month. However, the Union further asserts that at the expiration of the 2002-2003 Agreement, the District refused to pay beyond the \$801.35 premium from the previous year. This resulted in bargaining unit employees paying \$229.91 per month in health care premiums. ***Employer Exhibit 32.*** As a result of further health insurance premium increases in 2004-2005, bargaining unit teachers are presently paying \$406.00 per month for their share of the premium payments.

The Association proposes that the District's share of the monthly premium be calculated on the basis of the last year's actual monthly premium plus 9%. This proposal would cover both 2003-2004 and 2004-2005 school years. It argues that this formula is consistent with that

provided in Article III, Section D and more fairly distributes the health care premium increases between the parties.

The District, on the other hand, proposes that it "round up" its portion of the health care premium from \$837.47 ($\$801.35 + 9\%$) to \$900.00 for 2003-2004. It further proposes to increase the \$900.00 by an additional 9% for 2004-2005 to a \$981.00 monthly premium payment. Teachers would then be responsible for any monthly premium payments in excess of those amounts.

The parties do not dispute the actual premiums levied for health insurance both for 2003-2004 and 2004-2005. The actual annual premium paid for health care insurance in 2003-2004 was \$12,375 or \$1,031.25 monthly. The actual annual premium paid for health care insurance for 2004-2005 is \$14,494.00 or \$1,207.83 monthly.

Under the Board's proposal, it would be responsible to pay the first \$900.00 per month toward the \$1,031.25 premium in 2003-2004. This means that the bargaining unit members would be responsible for **\$131.25** per month for their share of the premium that year ($\$1,031.25 - \$900.00 = \$131.25$). For the 2004-2005 year, the Board proposes that it be obligated to pay the first \$981.00 of the \$1,207.85 monthly premium. This means that the bargaining unit members will be responsible for **\$226.83** per month for their share of the premium in 2004-2005 ($\$1,207.83 - \$981.00 = \$226.83$). *Employer Exhibit 33.*

Under the Union's proposal for 2003-2004, the District would be obligated to pay the previous year's actual premium plus 9%. The actual premium for 2002-2003 was \$852.55 per month. Utilizing the Union's formula, the District would be obligated to pay the first \$929.28 in monthly premiums ($\$852.55 \times 1.09\% = \929.28) and the employees would be responsible to pay the **\$101.97** monthly balance. The difference in the parties' proposals for the 2003-2004 year is less than \$30.00 per employee.

Under the Union's proposal for 2004-2005 the District would be obligated to pay the 2003-2004 actual premium plus 9%. The actual premium for 2003-2004 was \$1,031.25 monthly.

Utilizing the Union's formula, the District will be obligated to pay the first \$1,124.06 ($\$1,031.25 \times 1.09 = \$1,124.06$) in monthly premiums and the employees would be required to pay the \$83.77 balance.

As one can readily observe, the difference between the parties' proposals for 2003-2004 presents somewhat less of a problem than the proposals for 2004-2005. It is the Fact Finder's understanding that the employees paid \$229.91 per month in 2003-2004 for their share of the health care premiums. Presumably, adjustments will be required regardless of whether I recommend the District's or the Union's proposal for that year. Under the District's proposal, each employee would be entitled to a monthly "rebate" of \$98.06 ($\$229.91 - \$131.25 = \98.06) for the premium contributions that they have already made for that year. Under the Union's proposal, each employee would be entitled to a monthly "rebate" of \$127.91 ($\$229.91 - 101.97 = \127.94) for the premium contributions that they already made for that year.

The proposals for 2004-2005 are far more problematic. Under the District's proposal, employees would be required to pay \$226.83 per month for their share of the health insurance premium whereas under the Union's proposal, the employee's share would actually decrease from \$101.97 in the previous year to \$83.77. As one can see, the proposal go in diametrically opposite directions.

Based upon the Fact Finder's review of the evidence, it appears that the Union's proposal on Health Insurance is more reasonable than that proposed by the District. While the parties' proposals for the 2003-2004 year are relatively close, I am disturbed by the unpredictability and volatility of the District's proposal in 2004-2005 and possibly beyond. Even by the District's own calculation, a member would be required to pay \$131.25 per month for the 2003-2004 year but the figure then jumps over 70% for the 2004-2005 year when the employees are required to pay \$226.93 per month for their share of the premium.

Conversely, under the Union's proposal, its membership will enjoy a 22% reduction in monthly health insurance premiums from 2003-2004 to 2004-2005 (from \$101.97 to \$83.77).

While this certainly lends credence to the District's argument that, over time, it could once again become responsible for the entire cost of the health insurance coverage, I find that for the limited purpose of this collective bargaining agreement, the Union's proposal falls closer to those school districts that have been identified as comparable. *Union Exhibit 1-D*. In this regard, however, the Fact Finder does not wish to create any assurances for future collective bargaining agreements. By recommending the adoption of the Union's proposal on health insurance, the Fact Finder submits that the parties' respective proposals *for this Agreement* contain both equities and inequities. However, *for this Agreement*, this Fact Finder believe that the Union's proposal on health insurance is the more reasonable of the two. Given the present volatility in the health insurance industry, the parties may be required to explore other methods of cost saving and cost sharing for future agreements.

Recommendation

The Fact Finder recommends that the parties adopt the Union's proposal on health insurance for the 2003-2004 and 2004-2005 years.

ISSUE 2 - WAGES/RETROACTIVITY

Under Article III of the current collective bargaining agreement, the parties provide a comprehensive 11-step teacher salary schedule. Bargaining unit members move vertically along the 11 steps but also move horizontally across the grid on the basis of their educational experience. The horizontal steps contain categories of "BS", "BS+20", "BS+30", "MA+20" and "MA+30". A teacher at step 1, BS received \$29,855 in the 2002-2003 year while a teacher at step 11, MA+30 received \$54,192 in that same year. These two figures represent the ends of the teacher salary schedule spectrum. *Employer Exhibit 1*. The evidence discloses that a significant majority of the bargaining unit teachers are at either step 10 or step 11 on the salary grid although the employees at two these steps have varying degrees of educational experience. *See Union's "cost grid" exhibits.*

The Union's wage proposal calls for an across-the-board increase of 3% for 2003-2004 plus an additional \$750.00 increase for steps 10 and 11. The Union further proposes a 3% across-the-board wage increase for the 2004-2005 year and an additional \$500.00 increase for steps 10 and 11.

The District's wage proposal calls for an identical 3% across-the-board increase for 2003-2004 and an additional \$750.00 increase for steps 10 and 11. However, for 2004-2005, the District proposes a 3% across-the-board increase but no additional money for steps 10 and 11.

The Union contends that prior to the 1996-1997 year, District teachers were in the upper third of the area districts both in pay and benefits. However, commencing that year, the District found itself with declining cash fund equity and deteriorating educational facilities. According to the Union, the District "desperately" required a bond millage to construct a new elementary school and to renovate the Middle School and High School. The Union contends that its membership were approached by the District and asked to support the millage campaign, which they did overwhelmingly. As a result the millage passed.

The Union further notes that at the time, the District's fund equity balance was \$195,000. The District asked the Union and the bargaining unit members to make certain economic concessions in order for the District to avoid deficit spending. The Union contends that the District representatives told the membership that once the District became more financially stable, "they would be taken care of". The Union responded by taking a wage freeze and agreed to an 8% cap on the insurance premium and a reduction in longevity payments for all teachers hired after 1994-1995. As a result of the economic adjustments made by parties, the bargaining unit members' ranking relative to teachers in surrounding school districts began to fall significantly. The Union points out that while bargaining unit members once resided in the upper third in both pay and benefits, today they rank at or near the bottom of list in comparison to other neighboring districts.

The District does not seriously dispute the historical analysis presented by the Union but contends that despite the aforementioned economic adjustments, bargaining unit teachers continue to be compensated competitively relative to their surrounding counterparts. The District notes that the longevity of the current staff is a positive indicator of its ability to "recruit and retain" teachers and points out that 56% of the bargaining unit have more than 10 years of experience with the District.

In analyzing the economic data supplied by the parties, it is difficult to make precise comparisons among those school districts that comprise the comparable group. The salary schedules among the comparison districts are not alike and many have either more or less steps and differing academic requirements for advancement horizontally across the grid. For example, as the District demonstrates, the present salary schedule in the parties collective bargaining agreement provides that employees with a bachelor's degree plus 30 credits receive the same pay as an employee with a master's degree. Yet, employees in the Arenac Eastern, Hale and Oscoda districts require their teachers to obtain a master's degree to achieve the same rate of pay as a District teacher with a bachelor's degree plus 30 credits. *Employer Exhibits 42, 43 and 44.* Conversely, the Standish-Sterling, Tawas and West Branch-Rose City districts more closely approximate the same salary level with less than a master's degree of academic experience. *Employer Exhibits 45, 46 and 47.*

The parties' 2003-2004 proposal of a 3% across-the-board increase and an additional \$750.00 increase for steps 10 and 11 means that a teacher at step 11 with either a bachelor's degree plus 30 credits or a master's degree will earn \$53,155.00. Effectively, that represents a \$2,276.00 raise or 4.5% increase in compensation. *Employer Exhibit 23.* Even under the Union's analysis, this increase moves the bargaining unit employees closer toward the middle of the pack. For a teacher with a bachelor's degree plus 30 credits or a master's degree, the increase moves them from last (11th) among its comparables to seventh place. *Union Exhibit 5-C.* Other

employees at steps 10 and 11 (which I previously indicated represent nearly 60 % of the bargaining unit) will enjoy similar increases in 2003-2004.

It should also be remembered that the bargaining unit employees will also be moving vertically from one step to the next (e.g. from step 4 to step 5) from 2002-2003 to 2003-2004 which will result in a compounding increase. For a teacher who was at step 1 in 2002-2003, the movement vertically along the salary grid coupled with the wage increase effectively results in an 8.7% improvement in compensation in 2003-2004. *Employer Exhibit 23*. Obviously, given the parties' agreement in this regard, I find this entirely acceptable.

Since there is no dispute between the parties for year 2003-2004, the Fact finder recommends the adoption of a 3% across-the-board wage increase plus an additional \$750.00 increase for steps 10 and 11 retroactive to the beginning of that year.

The remaining issue then becomes what to do about the 2004-2005 year. I am persuaded that the District's proposal for 2004-2005 is more reasonable particularly given my recommendation regarding the health care issue. Bargaining unit members stand to obtain considerable relief from the health care premiums they currently pay if the parties adopt the Fact Finder's recommendations. I am not insensitive to the arguments raised by the District both in terms of wages and health care benefits. Yet, as indicated previously, I do not believe that the District has acted reasonably in dealing with the bargaining unit over the health care issue. To soften the impact of the health care modifications that I have recommended, I believe that the District should not be required to add an additional \$500.00 to steps 10 and 11 in 2004-2005 on top of the 3% across-the board wage increase for that year. While this may result in less of an improvement in the teachers' standing vis-a-vis their counterparts in the surrounding districts, the 3% increase, coupled with health care relief, represents a significant improvement over the present economic state of the bargaining unit.

Recommendation

The Fact Finder recommends that the parties adopt the 3% across-the-board increase for 2003-2004 plus an additional \$750.00 increase for steps 10 and 11. This improvement shall be retroactive to the beginning of the 2004-2004 year.

The Fact Finder further recommends that the parties adopt the District's proposal of a 3% across-the-board increase for 2004-2005 with no further increase for steps 10 and 11. This improvement shall be retroactive to the beginning of the 2004-2005 year.

ISSUE 3 - LONGEVITY

Under the present collective bargaining agreement, teachers who were below the 11th year of service in 1994-1995 receive a one time \$750 longevity payment at the end of their 14th year to become part of their base salary. After the 1994-1995 year, all longevity payments become part of the teacher's base salary and all future percentage increases are calculated on base salary.

Article III, Section M.

The Union proposes an increase in the amount of longevity from the current \$750.00 to \$1,000.00 at the end of the 14th year. All future percentage increases to longevity will hereafter be based upon negotiated increases to the salary schedule. Those teachers having more than 11 years of service in 1994-1995 will continue to be grandfathered in at the pre-1994-1995 rates.

The District proposes that the parties retain the status quo.

The Union argues that as part of its effort to assist the District in cost containment, it agreed in a reduction in longevity for new hires after the 1994-1995 school year. Again the Union contends that this was done when the District's fund balance was low and that since that time, the fund balance has grown from "\$200,000 to in excess of \$3,000,000". *See Union's Post Hearing Brief, page 3.* The Union further argues that in comparison with the surrounding school districts, only the Au Gres and Sterling-Standish districts pay the same or lower than the District

when it comes to longevity compensation. The remaining districts pay considerably more.

Union Exhibit 2-A.

The Union further argues that under the current system, bargaining unit members do not receive the same amounts of longevity because of the complexity of the formula used to calculate these payments. This has resulted in an accounting nightmare that cannot be easily monitored.

On the other hand, the District argues that longevity should be considered in connection to the total compensation package. In this regard, the District argues that over 56% of the bargaining unit (51 of 81 employees) are at step 10 of the salary schedule or above. Five (5) more teachers will be moving to step 10 within the next year. Accordingly, the District argues that the Fact Finder should consider the addition of \$750.00 to steps 10 and 11 for the 2003-2004 year as well as the 3% across-the-board increase as part of his consideration of the overall compensation level.

While I do not believe that the Union's proposal is inherently unreasonable, this Fact Finder concludes that the District's proposal to retain the status quo is more acceptable given the adjustments recommended on the issue of health insurance. In this regard, I agree with the District that it is entirely appropriate to consider the employee's overall compensation and benefit package in fashioning a recommendation. This is particularly so where, as here, a significant majority of the bargaining unit already reside in the 10th and 11th steps of the salary schedule and where the District has agreed to increase the salary at these steps by an additional \$750.00 over and above the 3% across-the-board improvement in the 2003-2004 year.

Recommendation

The Fact Finder recommends that the District's proposal to maintain the status quo on longevity be adopted for 2003-2004 and 2004-2005.

ISSUE 4 - BINDING ARBITRATION

Under Article XIII of the current bargaining agreement, the last internal step in the grievance procedure rests with the Board of Education. If an aggrieved party wishes to seek further, external relief, he or she may, within 60 days, "take whatever action is deemed legal and necessary".

The Union proposes that Article XIII be amended to provide for binding arbitration. Specifically, the Union proposes the following:

If the Association is not satisfied with the disposition of the Board, it may within 10 days of the Board's decision, submit the grievance to arbitration through the American Arbitration association (AAA) whose policies and rules shall govern the proceedings. The decision of the Arbitrator shall be binding upon both parties. Costs of the Arbitrator shall be borne by the losing party.

The District, on the other hand, desires to maintain the status quo.

The District also challenges the authority of the Fact Finder to even consider and make a recommendation on the issue of arbitration because, it argues, the issue involves a permissive subject of bargaining which is inherently outside the purview of the fact finding process. While the District does not cite any specific authority that would conclusively indicate that the issue of binding arbitration cannot be considered in the fact finding process, it analogizes the situation to binding interest arbitration under Act 312. It cites to **Detroit Firefighters Association Local 344 IAFF v. City of Detroit**, 96 Mich App 543 for the proposition that an Act 312 arbitrator does not have the authority to rule on a non-mandatory subject of bargaining.

Rule 423.131(c) of the General Rules of the Department of Consumer and Industry Services, Employment Relations Commission defines a "dispute" for the purpose of fact finding. It provides that a dispute "means a disagreement regarding mandatory subjects of bargaining concerning rates of pay, wages, hours of employment, or other conditions of employment".

Yet, contrary to the District's assertion, the issue of arbitration is, in fact, considered to be a mandatory subject of bargaining. MERC, the NLRB, and the Michigan and federal courts have

utilized various tests to determine what constitutes a mandatory subject of bargaining. However, a single synthesized test has been recognized by the courts in Michigan and provides guidance in this regard:

Any matter which has material or significant impact upon wages, hours, or other conditions of employment, or which settles an aspect of the relationship between the employer and the employee is a mandatory subject, except for management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security.

See Grand Rapids Community College Faculty Association v. Grand Rapids Community College, 239 Mich App 650, 656-657 (2000).

The Michigan Public Employer Labor Relations Association, in its work "Michigan Public Employment Relations Law" (1994 Edition) states at page 92 that "Most of the major contract provisions have long been held to be mandatory subjects of bargaining, including hourly rates of pay, overtime pay, shift differentials, holiday pay, ***grievance procedures***, sick leave, work rules, seniority and promotion, pensions and management rights clauses". (Emphasis added.) This is consistent the decisions of the NRLB and its reviewing courts. See e.g. NLRB v. Independent Stove Co., 591 F.2d 443 (8th Cir. 1979); NLRB v. Montgomery Ward & Co., 133 F.2d 676 (9th Cir. 1943) and NLRB v. Boss Manufacturing Co., 118 F.2d 187 (7th Cir. 1941) where the Board and the reviewing courts specifically held that the issue of arbitration is a mandatory subject of bargaining. Indeed, in this same regard, the authors of The Developing Labor Law, Fourth Edition, comment at page 1200 that "Many topics that fall within the phrase "other terms and conditions of employment" are now so clearly recognized to be mandatory subjects of bargaining that no discussion is required". The issue of binding arbitration is listed among those in that category. Accordingly, it is the opinion of this Fact Finder that the issue of binding arbitration is properly before him for consideration.

The Union argues that the District is one of the few in the area that does not have a provision for binding arbitration in the grievance procedure. It asserts that all but one of the comparable districts maintain some sort of binding resolution. ***Union Exhibit 4-A.***

The Fact Finder notes that of the districts identified in this report as "comparable", Arenac Eastern has no provision for binding arbitration. Standish-Sterling and Tawas provide for binding arbitration but only by mutual consent. The Hale school district provides for binding mediation and the West Branch-Rose City and Oscoda districts provide for binding arbitration. While these statistics do not approach the level of overwhelming acceptance of arbitration as the Union contends, likewise, they do not support the District's argument that "while arbitration may be preferred in contracts downstate, it is very clear that in this pocket of the state, arbitration is not the standard". *See District's Post Hearing Brief, page 19.*

It is this Fact Finder's opinion that, unlike wages or compensation levels, arbitration is not necessarily tied to regional "acceptability". Its concepts and values are consistent with those of mediation, facilitation or binding interest arbitration. Their value to the bargaining relationship is not in any way diminished simply because, as the District suggests, they are labeled as "methods of alternative dispute resolution".

I am persuaded by the Union's argument that binding arbitration would be a valuable tool in the dispute resolution process. The Fact Finder takes judicial notice that requiring an employee to resort to the courts or the other state or federal regulatory agencies is both time consuming and extremely costly. Moreover, the costs of litigation, judicial or otherwise, are borne by both the employer and the employee and often result in a "lose-lose" situation even where the employer ultimately prevails.

Contrary to the District's fear that arbitration will open a floodgate of frivolous grievances, the Union notes that there have typically been only a handful of grievances in any one year. On only one occasion was a matter pursued to court and, in that case, the Union/employee prevailed. Moreover, the Fact Finder notes that the Union proposes that a "loser pays" clause be attached to the arbitration language. This will, of necessity, force both parties to seriously assess their chances in arbitration and will, in the opinion of this Fact Finder, result in a direct and measurable control over the filing and/or advancement of arguably frivolous grievances.

Accordingly, the Fact Finder believes that the Union's proposal for binding arbitration is reasonable and should be adopted.

Recommendation

The Fact Finder recommends that the Union's proposal on binding arbitration be adopted.

ISSUE 5 - DESIGNATED STAFF RESTROOMS

The Union proposes that the District reassign one students' restroom (presumably in each building) for exclusive use by members of the bargaining unit. It claims that this would provide "a measure of dignity for the staff as well as the obvious liability protection for both parties".

See Union's Post Hearing Brief, page 5.

The District, on the other hand, argues that restrooms for the exclusive use of the staff is a space availability issue that cannot be resolved by the Fact Finder. It notes that the District has a responsibility to the students and the teachers to provide reasonable access to facilities. Striking that balance, the District argues, is best left to itself.

Neither the Union nor the District provided the Fact Finder with any evidence supporting their respective positions.

As indicated in my discussion of the arbitration issue, I am bound to consider only those issues that fall within the definition of a "dispute" in collective bargaining. I am further bound by the Rules' definition of "dispute" as a mandatory subject of bargaining. Rule 423.131(c). As illustrated earlier, a mandatory subject of bargaining has been defined as any matter which has material or significant impact upon wages, hours, or other conditions of employment, or which settles an aspect of the relationship between the employer and the employee, except for management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security.

I am not convinced that this issue is appropriately before me as a Fact Finder because I am not convinced that the issue of bath rooms for the *exclusive* use of the staff is, in fact, a

mandatory subject of bargaining. Accordingly, I do not make any recommendation on this issue. However, even if compelled to make a recommendation, I believe that the Union's proposal in this regard is impractical under the circumstances. I therefore would not recommend its adoption even if I were to have jurisdiction.

Recommendation

The Fact Finder makes no recommendation on this issue and, if compelled to make one, would recommend against the adoption of the Union's proposal.

ISSUE 6 - OPTION B CASH PAYMENT

Article III of the current bargaining agreement provides what is known as "Plan B" that compensates bargaining unit members who do not participate in the District's health insurance plan. Currently, the District pays a participating Plan B member \$20.83 per month (approximately \$250.00 per year). There are presently 15 participants in the Plan B option.

The Union proposes that the amount paid per month be raised from \$20.83 to \$250.00 per month or \$3,000.00 per year. It argues that if its proposal is adopted, at least 10 more bargaining unit members will join the Plan B option.

The District opposes the Union's proposal as too costly. It offers, in the alternative, an increase in the amount to \$119.82 per month or \$1,438.00 per year. However, the District appears to be somewhat confused over the specific proposal advanced by the Union in this regard. The District notes in its Post Hearing Brief that the Union's proposal would add \$50.00 per month to the current rate or a \$9,000.00 additional expense to the District over the course of a year. This, however, falls significantly short of what the Union proposes.

The comparable school districts offer the following:

1. Hale: \$66.00 per month (\$792.00 annually).
2. Arenac Eastern: \$0 (no contract language).
3. Twas: \$0 (no contract language).
4. Oscoda: \$100.00 per month (\$1,200.00 annually)
5. West Branch-Rose City: \$150.00 per month (\$1,800.00 annually)
6. Standish-Sterling: \$351.95 per month (toward annuity)(\$4,740.00 annually).

See *Union Exhibit 3-A*.

Based upon the evidence presented by the parties, the Fact Finder believes that the Union's proposal is too generous and the district's proposal is too conservative. The Fact Finder sees an obvious benefit to the District if it is able to entice bargaining unit members to opt into Plan B. It will not do so at less than \$1,500.00 per year. Conversely, the Union's proposal is out of line with the arrangements in place in surrounding districts. In this instance, a compromise appears to be in order. The Fact Finder believes that \$150.00 per month is not an unreasonable level of compensation. This amounts to an annual payment of \$1,800.00 and places the bargaining unit in the middle of the comparable school districts.

Recommendation

The Fact Finder concludes that neither the Union's nor the District's proposal on Option B is reasonable. Accordingly, he recommends that the monthly payment to Option B participants be increased to \$150.00.

CONCLUSION

Issue 1 - Health Insurance

The Fact Finder recommends that the parties adopt the Union's proposal on health insurance for the 2003-2004 and 2004-2005 years.

Issue 2 - Wages/Retroactivity

The Fact Finder recommends that the parties adopt the 3% across-the-board increase for 2003-2004 plus an additional \$750.00 increase for steps 10 and 11. This improvement shall be retroactive to the beginning of the 2003-2004 year.

The Fact Finder further recommends that the parties adopt the District's proposal of a 3% across-the-board increase for 2004-2005 with no further increase for steps 10 and 11. This improvement shall be retroactive to the beginning of the 2004-2005 year.

Issue 3 - Longevity

The Fact Finder recommends that the District's proposal to maintain the status quo on longevity be adopted for 2003-2004 and 2004-2005.

Issue 4 - Binding Arbitration

The Fact Finder recommends that the Union's proposal on binding arbitration be adopted.

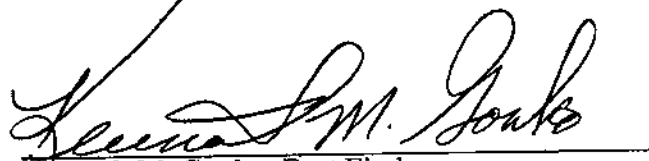
Issue 5 - Staff Restrooms

The Fact Finder makes no recommendation on the issue of designated staff restrooms and, if compelled to make one, would recommend against the adoption of the Union's proposal.

Issue 6 - Option B Payments

The Fact Finder concludes that neither the Union's nor the District's proposal on Option B is reasonable. Accordingly, he recommends that the monthly payment to Option B participants be increased to \$150.00.

Respectfully submitted,


Kenneth M. Gonko, Fact Finder

Dated: December 16, 2004