

STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding:

Westwood Community School District,
Public Employer

MERC Case No.: L04F-1042

Before Fact Finder
Robert E. Winkelman, Esq.
Couzens, Lansky, Fealk, Ellis, Roeder
& Lazar, P.C.
39395 W. Twelve Mile, Suite 200
Farmington Hills, MI 48331
(248) 489-8600

and

Wayne County MEA/NEA,
Labor Organization

Michigan Education Association
Gerald E. Hammond
Union Representative
7445 Allen Road, Suite 200
Allen Park, MI 48101
(313) 381-5100

Thrun Law Firm, P.C.
C. George Johnson
Attorney for Public Employer
501 S. Capital, Suite 500
P.O. Box 40699
Lansing, MI 48901-7899
(517) 484-8000

**FACT FINDER'S REPORT, FINDINGS OF FACT AND
RECOMMENDATIONS**

INTRODUCTION

The Employer, Westwood Community Schools, hereinafter referred to as "District," is a Michigan general powers school district organized and operated pursuant to the applicable provisions of the Michigan Revised School Code, MCL 380.1 et seq. As a general powers school district, it is governed by a Board of Education comprised of 7 elected members. The Board of Education is a public school employer as defined in Section 1(1)(h) of the Michigan Public Employment Relations Act, MCL 423.201(1)(h).

There are 140 bargaining unit teachers providing the instructional services to the students enrolled in the "District". They are represented for the purposes of collective bargaining in a single bargaining unit represented by the labor organization, The Wayne

County MEA/NEA (hereinafter referred to as "WCMEA/NEA"). The "WCMEA/NEA" is a bargaining representative for the bargaining unit as defined in Section 1(1)(a) of the Michigan Public Employment Relations Act, MCL 423.201(1)(a) and is the sole and exclusive bargaining representative, as defined by Section 11 of the Michigan Public Employment Relations Act, for the bargaining unit of certified teachers employed in the "District".

The "WCMEA/NEA" and the "District" are engaged in a collective bargaining relationship pursuant to Section 15 of the Michigan Public Employment Relations Act, MCL 423.215 and negotiated the collective bargaining agreement between them for the period July 1, 1998 through August 31, 2002. The "WCMEA/NEA" and the "District" have been unable to reach agreement upon all the terms of a successor collective bargaining agreement to the one that expired on August 31, 2002.

The Dispute

There are unresolved issues and facts in dispute between the "District" and "WCMEA/NEA". The issues presented to the Fact Finder at the April 14, 2005 Hearing encompass the following:

- I. Salary
- II. Health Insurance
- III. Severance Pay
- IV. Calendar/Work Day
- V. Elementary Class Size Overloads
- VI. Elementary and Secondary Education Act
- VII. Dress Code

Issues

- I. Salary.

As of August 11, 2004, the "WCMEA/NEA" proposal for salary component was as follows:

2002-03	3% retro monies
2003-04	3.5% retro monies
2004-05	4% increase
2005-06	4% increase

For the Fact Finder, the "WCMEA/NEA" has revised their salary request as:

2002-03	no retro monies
2003-04	no retro monies except for any member who retired from the "District" from September 1, 2002 through August 31, 2003 shall receive retro payment of 2% of their salary received during that period and any member who retired from September 1, 2003 through August 31, 2004 shall receive a retro payment of 4% of their salary received during that period.
2004-05	6% to each salary step from the 01-02 salary schedule and shall be retro paid to all members effective as of September 1, 2004.
2005-06	2.25% added to each salary step from the 04-05 salary schedule for the first semester and an additional 2.25% to each salary step from the first salary schedule for the second semester.
2006-07	2% added to each salary schedule step from the second semester 05-06 salary schedule

"District's" Position

2002-03	0%	0% retirees
2003-04	0%	0% retirees
2004-05	0%/5%	
2005-06	1.5%/1.5%	
2006-07	1.5%/1.5%	

Please see Addendum 1 for greater detail.

Michigan Public School Districts are funded primarily through the Michigan State School Aid Act, MCL 388.1601 et seq. The vast majority of operational revenue for a public school district is derived by the following formula: multiplying the Per Pupil Basis Foundation Allowance by the Blended Pupil Count. (The Blended Pupil Count = 75% September Count plus 25% February Count). Section 102 of the State School Aid Act, MCL 388.1702, prohibits any Michigan public school from adopting or operating under a deficit budget. In other words, a public school district is obligated to operate within the current funds available.

For the 2004-05 school year, the "District" has a Per Pupil Foundation Allowance in the amount of \$7,410 of which \$320 is dedicated to be expended for reduced class sizes in Kindergarten – Grade 3. The Per Pupil Foundation Allowance has not increased since the 2002-03 school year. In fact, it was reduced by \$74 during 2003-04. In addition, the "WCMEA/NEA" states that the 2004-05 Per Pupil Foundation Allowance = \$7,730 and not the \$7,410 per the "District." The difference = \$320

Subsequent to the Fact Finder Hearing, the "District's" Attorney acknowledges in his letter dated May 19, 2005 to the Fact Finder that the correct Per Pupil Foundation Allowance received is indeed \$7,730:

\$7,730	Total is correct
- 320	Dedicated to small class size
\$7,410	Balance

The Blended Pupil Count is derived from the following data:

<u>Pupil Membership</u>			
<u>75%</u>	<u>Total</u>	<u>Residents</u>	<u>School of Choice</u>
September Count 9/2002-03	2,048	1814	244
September Count 9/2003-04	2,252	1674	578
September Count 9/2004-05	2,337	1753	584
<u>25%</u>			
February Count 04/2005	2,295	1666	629

The Fact Finder is not convinced by the "District's" recommendation that the Standard and Poor's comparable is the appropriate basis for measurement mainly because it does not differentiate between the teachers' degrees. However, according to Exhibit 22 for the 2002-03 FYE District Teacher Compensation, the Teacher's Compensation per

pupil is the highest among its peers.

According to exhibits provided by "WCMEA/NEA" comparing pay maximums, the "District" is toward the bottom of the seven comparables ("WCMEA/NEA" Exhibits #35, #36, #37 and #38).

The Fact Finder understands that both the Association's proposals and the Employer's proposals for salaries for the school years involved in Association Exhibit 29 and that the total cost difference between the two (2) sets of proposals for the 2004-2005, 2005-2006 and 2006-2007 school year is \$193,515 when the proposed salary schedulers are costed out. The Fact Finder is concerned about the additional cost (the Employer states \$300,000 plus) for the step increments awarded to those not on the top steps of the salary schedule.

Concerning the Fund Balance, the Fact Finder believes that the "District's" Fund Balance has grown since 1999-2000. "WCMEA/NEA" Exhibit #5 shows that the relative change in Fund Equity balances in the comparable districts for the most recent audited records shows the "District" ranked first.

The Fact Finder finds there is no dispute as to the salary request for 2002-2003, 2003-2004 with no retroactive increase. Concerning the retirees for 2002-2003, 2003-2004 the Fact Finder is not persuaded that just because the costs to the District are not great that this should be recommended.

However, the Fact Finder is persuaded that increases should be recommended for 2004-2005. The Fact Finder was persuaded that the "WCMEA/NEA's" position for 6% increase was warranted for 2004-2005. Additionally, for the 2005-06 year, the Fact Finder recommends an increase based on the "District's" proposal for that year, namely 1.5% added to each salary step for the first semester, and an additional 1.5% added to each salary step for the second semester. As for the 2006-07 year, the Fact Finder recommends that the parties return to the table to negotiate a mutually acceptable arrangement for this issue.

One of the challenges the Fact Finder had was that the "District" discussed salary not alone, but with the other issues and especially with health care. At the Pre-Fact Finding Hearing, it was suggested that the parties address these issues separately.

II. Health Insurance. Currently, the "District" provides MESSA SuperCare I Health Insurance (a traditional health care plan) which has a \$50/\$100 individual/family annual deductible feature with a \$2 prescription drug co-pay. The "District" fully pays the cost for the health insurance premiums. The "WCMEA/NEA" proposed to maintain the current health insurance plan fully paid by the "District" but with a change to a \$5/\$10 generic/brand prescription drug co-pay as of August 11, 2004.

At the Fact Finder Pre-Hearing on April 5, 2005, the "WCMEA/NEA" presented a

revised proposal to maintain the current MESSA SuperCare I Health Insurance Plan through August, 2005 and beginning on September 1, 2005, place all non-tenured staff on MESSA Choices II (a PPO health care plan) with tenured staff being given an option for either the MESSA Super Care I with the \$5/\$10 generic/brand prescription drug co-pay and a \$100/\$200 individual/family annual deductible or the MESSA Choices II Plan. Effective September 1, 2007, all staff would be provided with MESSA Choices II and the insurance premium would be paid by the "District" without limit.

The "District" proposed that all staff be provided with MESSA Choices II as of January 1, 2005, with all premiums fully paid by "District." Effective July 1, 2005, the "District" would continue to provide all staff with MESSA Choices II and pay the premium increase in cost up to a limit of 12% more than the 2004-05 premium rate. Effective July 1, 2006, the "District" desires to continue to provide MESSA Choices II and pay the premium cost increase above the 2004-05 premium rate up to a limit of 24% more than 2004-05 rate. Additionally, the "District" has proposed a process by which there would be the ability to switch to an "equivalent" health insurance plan with notice to and discussion with the "WCMEA/NEA" and arbitration of any equivalency dispute prior to the switch if no mutual agreement can be reached with the "WCMEA/NEA."

The Fact Finder takes judicial notice as also evidenced by the exhibits that there is a severe trend in escalating health insurance costs. Please note in the expired collective bargaining agreement (District Exhibit 48), there is a provision for switching to another insurance plan "if there will be no reduction or loss of any benefit or extent of coverage from those insurance plans in effect at the time of the switch."

According to District Exhibit 17, the "District" is paying substantially more per student toward teacher health insurance when compared to the state, county, and peer group school districts. According to District Exhibit 20, the "District" is paying significantly more per student for teacher insurance when compared to other "WCNEA/NEA" member districts.

The "WCMEA/NEA" raises a point which the Fact Finder takes judicial notice of that the "WCMEA/NEA" members currently enrolled would need time to adjust moving from a traditional Health Insurance Plan to a PPO Program. Time may be needed by members to find eligible doctors and health care providers.

The Fact Finder believes it is in the best interest of the "District" and the "WCMEA/NEA" members to gain control now of the highly escalating cost of health care. However, because of judicial notice and the realization that sometimes it is difficult to make the transfer to new health care providers, the "District" postpone from July 1, 2005 to October 1, 2005 the movement of all staff to Care Choices II as proposed, however, without a cap on the health care premium paid by the "District." Additionally, as another option, for those "WCMEA/NEA" members who wish to keep MESSA Care Choices I, it is recommended they pay the difference in premiums between Care Choices II which the "District" will pay and Care Choices I with the deductible increased to \$100/\$200

individual/family and prescription drug copay \$5/\$10 generic brand.

In addition, the Fact Finder understands from the "WCMEA/NEA" post-hearing brief that no other comparable district has a cap on insurance premiums. In addition, the "District," in its brief on page 21, believes the proposed cap would have no effect for the 2005-06 school year. The Fact Finder believes that a cap should not be imposed at this time because the "WCMEA/NEA" members will be making a substantial sacrifice by moving to MESSA Choices II.

Lastly, the idea that "District" would have the ability to switch to an "equivalent" health insurance plan with notice and discussion with "WCMEA/NEA" and arbitration of any equivalency dispute prior to the switch if no mutual agreement to switch can be reached with the "WCMEA/NEA" seems like a very positive idea which would promote flexibility and cost-savings.

III. Severance Pay.

The expired collective bargaining agreement contains a severance payment provision in Article XI, Section A (District Exhibit 48). It calls for a severance payment of one-half (1/2) of a teacher's accumulated unpaid leave days in the teacher's personal leave bank at the time of severance. There is no limit to the number of days a teacher can accumulate under the paid leave benefits provided by the "District." A teacher is provided 1 paid leave day/month up to 10 days in each school year and an additional 5 paid personal leave days each school year. This can accumulate in the teacher's individual leave bank if not used. "WCMEA/NEA" wishes to maintain the current severance pay provision.

The "District" proposal would place a limit and would allow for payment of 50% of all accumulated leave days prior to July 1, 2004 and 50% of accumulated leave days accumulated after July 1, 2004, not to exceed a total payment for 100 accumulated leave days at 50%.

The Fact Finder takes judicial notice that the purpose of leave days is to give employees flexibility in handling their personal affairs. However, this unlimited option creates a financial burden on the "District." The Fact Finder's understanding is that this provision is relatively unique to the "District."

The Fact Finder believes it is in the best interests for the "District" and the "WCMEA/NEA" members to have a limit on the number of personal leave days that can be accumulated in an individual's account. The Fact Finder does not find it unreasonable for the "District" to take the position that this limit should not exceed 100 leave days, especially if there is only a potential to accumulate 15 leave days per year. However, current members of the "WCMEA/NEA" are well aware of its presence and currently count on that severance when planning their retirements. Therefore, this policy change should not be made retroactively, but rather take effect on July 1, 2005. The Fact Finder's understanding

from the "District's" brief is that the proposal does not adversely affect the accumulation that teachers have already acquired.

IV. Calendar/Work Day.

The standard work year during the expired collective bargaining agreement was 185 Teacher Whole Days of which 182 were scheduled Instructional Days with Students. According to the "WCMEA/NEA" post-hearing brief, the minimum number of instructional hours a district must provide is state mandated at 1,098 hours/school year.

The "WCMEA/NEA" proposes to reduce the number of days of instruction by 2, for the 2004-05 school year and 2 additional days for the 2005-06 school year with instruction days to be 180 and teacher work days to be 183, as follows:

<u>School Year</u>	<u># Instructional Days</u>	<u># Total Teacher Work</u>
end of bargain	182	185
2004-05	180	185
2005-06	180	183

Additionally the "WCMEA/NEA" wishes to relieve those elementary schools teachers from the responsibility of monitoring the breakfast program (10 minutes/day) or remunerate them on a per-diem basis for this responsibility.

The "District" proposes to maintain the calendar work year as is and opposes the elimination of supervision of the breakfast program by elementary school teachers.

The Fact Finder believes that the 10 minute/day supervision of the elementary school breakfast program is well within the teacher's role, especially when you consider the benefit to the children. It is noted that teachers often make time to meet with students prior to the school day and after the school day ends.

Concerning the calendar, this Fact Finder proposes that the parties return to the table to negotiate a mutually acceptable calendar, keeping in mind that student instruction is the top priority here.

V. Class Size Overloads

According to Article VII, Section B of the expired collective bargaining agreement, it states:

"The compensation for class overloads shall be dropped."

For the 2001-02 school year, the "District" and the "WCMEA/NEA" entered into a one-year memorandum agreement establishing a payout of \$100/student per semester to each teacher whose class contained more students than the class size maximums. This

memorandum has been continued on a year-to-year basis in the absence of a contract settlement to date for Secondary teachers. The "WMEA/NEA" proposal is to now include elementary teachers where applicable. The "District" opposes this position.

According to the "District's" Business Manager, the "District" will incur approximately \$100,000 in class overload compensation expenses paid to secondary teachers for the 2004-05 school year. District Exhibit 58, according to the "WCMEA/NEA" post-hearing brief, listed all elementary classes within the "District" and shows that none of them are currently above the maximum class size of 30.

The Fact Finder believes since this is a moot point at the moment, this issue should be a subject for future negotiation between the parties.

VI. Elementary and Secondary Education Act.

During bargaining, the parties reached a tentative agreement incorporating a recognition of the obligation to comply with the requirements of the ESEA/NCLB (District EXH 63). This tentative agreement incorporates specific qualifications and criteria for assignments that a teacher must meet to be in compliance with the Federal No Child Left Behind Act. The "WCMEA/NEA" has proposed provisions for the ESEA School Improvement Committee to have 6 "WCMEA/NEA" members and the "District" have 3 members for a total of 9 members.

The "WCMEA/NEA" seeks to require the "District" to accept the portfolio assessment option for a teacher to become "highly qualified" in compliance with the ESEA/NCLB requirements.

The "District's" position is that ESEA/NCLB Compliance was bargained and addressed in the tentative Agreement (District Exhibit 53) and the subsequent proposal should not be subject to further bargaining.

The "District" believes compliance with the ESEA/NCLB requirement is an ongoing assessment addressed through the "District's" school improvement process.

"WCMEA/NEA" has not presented any school district where the content of their proposal has been approved and agreed upon. The matter of teacher qualification is a natural subject for the "District" to handle. "It has long been recognized that a Board of Education may require qualification criteria that more stringent than simple certification as a teacher." Therefore, the Fact Finder agrees with the District's position that this subsequent proposal should not be subject to further bargaining.

VII. Dress Code.

The "District's" Board of Education has maintained a policy for Staff conduct and appearance (District Exhibit G5), Board policy 4016.4 states:

"Staff dress and grooming must not disrupt the educational process, interfere with the maintenance of a positive teaching/learning climate, or compromise reasonable standards of health, safety and decency."

The concept of dress codes in public schools for both students and employees have withstood legal challenges and have been determined to be constitutionally permissible.

This is a highly emotional issue. The Fact Finder believes it is in everyone's best interest, (the "District" and "WCMEA/NEA") for the parties to establish an ongoing committee to develop mutually agreeable criteria. It is important that this issue not be used for punitive purposes.

Summary of Resolutions

The Fact Finder summarizes his resolutions to the issues as follows:

I. Salary:

	2002-03	2003-04	2004-05	2005-06	2006-07
Resolution	0% (0% to Retirees)	0% (0% to Retirees)	6%	1.5%/1.5%	To Be Negotiated

II. Health Insurance:

Effective October 1, 2005: Move all staff to MESSA Care Choices II with the "District" to pay full cost without limitation.

Additionally, give the "WCMEA" members the option to retain MESSA Super Care I with a \$5/\$10 generic/brand prescription drug copay and a \$100/\$200 individual/family annual deductible by allowing the members to pay the difference in the premium between the MESSA Care Choices II Plan and the MESSA Super Care I Plan.

III. Severance Pay:

Effective July 1, 2005, place a limit of on the number of leave days, which can be accumulated in an individual's account. This limit would equal 100 days.

IV. Calendar/Work Day:

Continue the supervision of the Breakfast Program by elementary school teachers without additional remuneration.

Return to the bargaining table to negotiate a mutually acceptable calendar, keeping in mind that student instruction is the top priority.

V. Class Size Overloads:

Since there is no impact on the current situation, return to the bargaining table to negotiate a mutually acceptable policy for compensating class size overloads for elementary teachers.

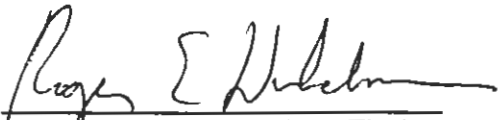
VI. Elementary and Secondary Education Act (ESEA):

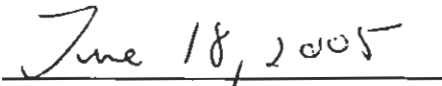
The Fact Finder agrees with the District's position that this subsequent proposal should not be subject to further bargaining.

VII. Dress Code:

Establish an ongoing committee comprised of both parties to develop mutually agreeable criteria.

In closing, the Fact Finder encourages the parties to work together on the issues left open for future negotiations.


Roger Winkelman, Fact Finder


Date

Addendum 1

Proposed Salary Issues in Dispute

("WCMEA/NEA" Proposal 8/11/04, District Exhibit 49)

	2002-03	2003-04	2004-05	2005-06
WCMEA/NEA	3%	3.5%	4%	4%
	(Retroactive)	(Retroactive)		

("WCMEA/NEA" Proposal 4/05/05, District Exhibit 50)

	<u>2002-03</u> 0% (2% to Retirees)	<u>2003-04</u> 0% (4% to Retirees)	<u>2004-05</u> 6%	<u>2005-06</u> 2.25%/2.25%	<u>2006-07</u> 2%
WCMEA/NEA					

("District" Proposal 11/08/04, District Exhibit 49)

	<u>2002-03</u> 0% (0% to Retirees)	<u>2003-04</u> 0% (0% to Retirees)	<u>2004-05</u> 0%/5%	<u>2005-06</u> 1.5%/1.5%	<u>2006-07</u> 1.5%/1.5%
DISTRICT:					