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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION
(BENTON HARBOR EDUCATION
ASSOCIATION),

Petitioner-Union,

-and-

MERC Fact Finding Case No: L04 E-7012
Teachers Association

BENTON HARBOR AREA SCHOOLS,

Respondent-Employer.
_______________________________________/

APPEARANCES

For the Union:

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For the Employer:

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- Petition Filed: 2/23/05
- Employer Response: 3/8/05
- Fact Finder Appointed: 5/3/05
- Pre-hearing: 5/17/05
- Review pre-hearing positions Joint 2(a), 2(b): 6/16/05
- Hearing: 7/18/05
- Post-hearing positions: 8/17/05
- Report/Recommendation: 9/6/05

Fact Finder:

JOHN A. LYONS

FACT FINDING REPORT AND RECOMMENDATION

BACKGROUND

The parties engaged in several collective bargaining sessions and at least one mediation meeting. The mediation session occurred after the parties had entered into a tentative agreement in November, 2004 that the Association failed to ratify. The mediation session was held in February, 2005 and an additional negotiation session was held in May, 2005 prior to this fact finding hearing.

The unresolved issues set forth in the Petition are: salary (3 years) and insurance contribution. In Section 4A the Union suggests that the reason a fact finder could assist the parties in resolving the issues would be "To encourage the parties to reach a prompt, fair and equitable settlement."

This bargaining unit represents those employees who are identified in the bargaining unit description of Section A of Article I, Joint Ex. 1, as:

> . . . all classroom teachers, summer school teachers, adult education teachers, driver education teachers, nurses, therapists, psychologists, social workers, guidance counselors, department chairpersons, librarians/media specialists, teacher consultants, career technological teachers, JROTC instructors, in-house suspension monitors, employability skills instructors, health and wellness instructors, interventionists and permanent substitutes employed in the same position for sixty (60) consecutive working days. . . .

There are approximately 323 employees within the bargaining unit.

HEARING/EVIDENCE

The Association presented the testimony of Association President Angelika MacGowan and MEA Economist Ruth Beier. The Employer presented testimony through Assistant Superintendent for Business and Finance, Sheletha Bobo.

The current collective bargaining agreement expired on August 1, 2004. According to the Union the membership rejected a tentative agreement that was reached in December, 2004, ". . . due largely to a first-ever co-pay on health insurance premiums and the fact that members at the top of the salary schedule would actually experience a reduction in take-home pay." Another reason for the rejection was a complicated formula for salaries in the second and third year of the agreement.

The unresolved issues remain health insurance, salary and effective date for the agreement. In addition to the testimony the following exhibits were admitted:

J-1 Collective Bargaining Agreement
J-2a District positions on open issues
J-2b Association positions on open issues

POSITION OF THE PARTIES

SALARY:

- Association: Proposes a 3% across-the-board increase for each year of a three (3) year agreement.

- District: Offers a 1% increase for 2004-05 with step increases for salary scheduled to eligible employees. For the years 2005-06 and 2006-07 a .75% salary increase for each full 1.5% increase from the prior year's Foundation Allowance. It is a formula type proposal.

HEALTH INSURANCE:

- Association: Change from MESSA Super Care I to MESSA Choices II (PPO). The teachers to contribute 3% of premium.

- District: Change from MESSA Super Care I to MESSA Choices II (PPO). Employer paid premiums capped at 92% of the 2004-05 rates.

COLLECTIVE BARGAINING AGREEMENT:

- Association: Three (3) years through 2006-07, retroactive to August 1, 2004.

- District: Through 2006-07 school year, agreement effective upon ratification by Association and approval by Board of Education.

The parties submitted extensive post-hearing written arguments in support of their respective positions. In addition, during hearing each party submitted substantial and comprehensive exhibits to support their respective positions.

The basic fiscal condition of the Employer, based on the totality of the evidence, is somewhat better than painted by the District. The Foundation Allowance received by the District is very comparable with their own suggested comparable districts. The General Fund balance while reduced from the 1998-99 fiscal year has increased since 2001 and 2002 until in 2003-04 it is three million one hundred thousand ($3,100,000) dollars. It is most interesting that the Benton Harbor District ranks seventh in General Fund balance as a total percent of expenditures in the Union comparables. Under current operating expenditures per pupil the District ranks fifth of those comparisons suggested by the Union, and sixth of twenty-eight suggested by the Employer. These figures would indicate that the District is in fair financial condition when comparing operating expenditures per pupil.

Moreover, the Association presented unrebutted evidence of significant error rates in the budgeted fund balance to the actual fund balance in the years 1997-98 through 2003-04. In the budgeted fund balance for 2003-04 it was $1,264,141 whereas the actual was $3,098,891, a difference of $1,834,750 or a 59% error rate. In addition, the Association presented actual error differences between budgeted and actual General Fund balance which averages $1,500,000 over seven fiscal years. For instance, in the 2004-05 estimated fund balance of negative ($3,878,743), the actual fund balance was $3,100,000. The Union characterizes this approach as a "doomsday" approach. Further Union evidence showed that the District ranked ten of twelve when instructional salaries are considered as a percent of total expenditures. That amount has fallen since the 1998-99 fiscal year. Whereas, the cost of administration ranks number one of the comparables suggested by the Association. Clearly, the administrative costs have increased. The Union argues that the main emphasis should be financial considerations for educational purposes; that the emphasis should be on pay and benefits of teachers. It is argued that the administrators have been well taken care of and haven't had to incur the same financial restrictions as placed on teachers. There is something to be said for "leading by example". Regardless, the District could face reduced student enrollment which results in a loss of funds or the possibility of a reduction in the Foundation Allowance. There was, however, testimony that the Foundation Allowance will be increased somewhat. The testimony of Ms. Beier suggests an increase from $6,700 to $6,875 per pupil.

On the other hand, the Employer urges that expenditures far exceed revenue and that as a result it has a reduced fund balance and a need to borrow funds to meet expenses. In 2004-05 it was necessary for the District to borrow $6,000,000, and for the 2005-06 school year it will borrow $4,500,000 from the Michigan Municipal Bond Authority according to Ms. Beier's testimony this is a common and preferred practice because the District should not act as a "bank" as is suggested by Benton Harbor's actions. The Benton Harbor Area General Fund balance as exhibited in the chart 1999-2004 was reduced from 13.7% to 6.5% as of June 30, 2004. However, the fund balance is not increased from 2002 to 2004. The Employer has argued its inability to pay the Union demand as suggested the following salary provision:

> For 2004-2005 Benton Harbor Area Schools has offered to adjust the salary schedule (Appendix A) upward by 1% prorated to the date of ratification/approval of the collective bargaining agreement by the BHEA membership and the Board of Education.
>
> For the 2005-2006 and 2006-2007 school years, the District has proposed to adjust teachers' salary levels based on revenue received according to a formula tied to the per pupil Foundation Allowance pursuant to the Michigan State Aid Act. Starting at a base level of $6,700 per pupil, salary is to be adjusted upward by 3/4% for each full 1.5% incremental increase in the District's per pupil Foundation Allowance. The Foundation Allowance in any subsequent year above $6,700 then becomes the new base level for the following school year against which a future 1.5% incremental increase in Foundation Allowance is measured. Any mid year reduction in Foundation Allowance to a per pupil amount that is less than 1.5% incremental increase from the previous years' base will result in the corresponding teachers' salary increase to be rescinded for the period of time in which the Foundation Allowance remains below a level of at least a 1.5% incremental increase from the previous years' base.

The suggestion of the Employer is obviously an attempt to modify the traditional way in which wages and economic benefits increases/decreases are typically negotiated.

The Union, on the other hand, objects to an implementation of the suggested compensation formula. It requests traditional increases and the terms of wage and salary to advance from its scheduled pay steps with an across-the-board increase. The Union suggests that the status quo with respect to the process by which wages are determined be maintained. It has, as set forth, requested 3% across-the-board increases for each year of the contract retroactive to August 1, 2004.

Both parties agree to a change from MESSA Super Care I to MESSA Choices II (PPO). The Association seeks to limit their contribution to 3% of the premiums for the cost of the coverage. The Employer wishes to cap Employer paid premiums at 92% of the 2004-2005 premium rates. In other words, the Employer is suggesting that the Association pay 8% of the 2004-2005 rate.

The parties could not agree to the duration of the collective bargaining agreement although it is presumably for a period of three years. The Union suggests that it be retroactive to August 1, 2004, while the Employer refers to its position as through 2006-07 school year effective upon date of ratification by Association and approval by the Board of Education.

The following recommendations are, for the above reasons and conclusions, made in the hopes that it will assist the parties in resolving the dispute as to the issues.

Duration of Agreement:

It is the fact finder's recommendation that the Agreement be made retroactive to August 1, 2004 for all purposes except the modification of health care benefits. A three year collective bargaining agreement, with retroactivity, is a traditional method and is accorded by the weight of the comparables in evidence.

Health Insurance:

Health insurance should be changed from MESSA Super Care I to MESSA Choices II (PPO) with the teachers contributing 5% of the premium. This change in contribution would be made effective on the date of signing the agreement. The reason for this suggestion is that currently the employees do not contribute toward health care. The argument of the Employer has merit for several reasons which are stated in its written argument as well as exhibits. However, an 8% contribution appears, based on the evidence, to be as a beginning point, simply too rich and it is not called for by the majority of the comparables.

Wages:

Recommended wages are:

Effective August 1, 2004	2.5% increase
Effective August 1, 2005	2% increase
Effective August 1, 2006	2% increase

The suggested formula by the Employer is simply too complicated and based on significant contingencies. The Employer's offer could result in wages once granted, rescinded based on vagaries over which the Association has little or no control.

SUMMARY

DURATION OF COLLECTIVE BARGAINING AGREEMENT:

The Agreement will be for a period of three years, retroactive to August 1, 2004.

HEALTH INSURANCE

Health insurance should be changed from MESSA Super Care I to MESSA Choices II (PPO) with the teachers contributing 5% of the premium effective with the signing of the collective bargaining agreement and its ratification.

WAGES

Effective August 1, 2004	2.5%
Effective August 1, 2005	2.0%
Effective August 1, 2006	2.0%

Respectfully submitted,

John A. Lyons, Fact Finder

Dated: September 6, 2005