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STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
IN THE EMPLOYMENT RELATIONS COMMISSION

MERC Case No. L06 H-8002
Before Fact Finder Alvis Phillip Easter, Esq.

In the Matter of Statutory Factfinding proceedings between:

Madison Public Schools,
Employer,

and

Michigan Education Association,
Labor Organization
_____/

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FACT FINDER'S REPORT

INTRODUCTION

These fact finding proceedings were initiated pursuant to MCLA 423.10(d)(2)11(1). In this case, the parties prior collective bargaining agreement expired on expired August 25, 2006. Despite their best efforts, the parties have not been able to reach an agreement on a successor contract.

On January 12, 2007, the MEA filed a Petition for Fact-Finding with the Michigan Employment Relations Commission. On March 28, 2007, the undersigned was appointed the Fact-Finder. A "telephone pre-hearing conference " was held on April 11, 2007, and the parties agreed to conduct a hearing on July 25, 2007.

At the hearing, Mr. James Boerma, MEA Uniserve Director appeared on behalf of the Association, and was accompanied by members from the Union team, including Ms. Mary Radant, MEA President and Bargaining Team Member; Ms. Jeannine Craig, MEA Vice President and Chief Negotiator; Mr. Scott Newcomb, MEA Treasurer and Bargaining Team Member, Mr. Steve Lasky, elementary teacher and Bargaining Team Member; Ms. Eve Gray, Media Director and Bargaining Team Member.

Mr. Joe Mosier, Attorney for the Madison Public Schools, appeared on behalf of the Employer, and was accompanied by members from the Employer's team, including Mr. James Hartley, School Superintendent; and Ms. Jennifer Morin, Business Manager.

The hearing commenced at about 10:00 a.m. on July 25, 2007 at the administrative offices of the Madison School District. It was concluded that same day. Both parties were given an opportunity to provide the fact finder with information which they deemed pertinent to their respective positions on the issues in dispute. The matter is now ready for the Fact Finder's report and recommendations.

Both parties were ably represented by very competent advocates, and it is not necessary to describe in detail the standards applicable to this process, except to briefly note the primary considerations for members of the public who may read this report.

Fact Finders are appointed and commissioned to ascertain the facts surrounding a dispute and apply recognized criteria to make a recommendation as to the collective bargaining agreement being negotiated by the parties. In nearly every collective bargaining situation, three (3) essential economic criteria are involved:

1. A comparison with other similarly situated employers and employees (market comparison)

2. Comparison to economic conditions (economic comparison)

3. The employer's ability to pay.

These economic criteria are important as the collective bargaining agreement, as well as the employer and the employees, are influenced by the economics of the market place. In non-economic matters, a fourth criteria mandates the Fact Finder to make fair and reasonable recommendations which accommodate the parties particular situation and which will assist to bring about a voluntary, friendly and expeditious adjustment and settlement of the differences that separated the parties and negated the possibilities of a settlement. These recommendations must be fair, legal and workable within accepted and established collective bargaining

practices between employers and the legally recognized exclusive bargaining agent of the employees.

Although there is no "final offer of settlement" provision in fact finding and although the Fact-Finder is free to adopt the position of either party, or to make an alternative recommendation not currently espoused by either party, decisions should be based on: (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 wages, hours and conditions of employment of the employees involved in the fact finding proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally. . . . (e) 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 proceedings. (h) Such other factors, not confined to the foregoing, which as normally or traditionally taken into consideration . . . .

In this case, in addition significant wage and insurance issues, both parties also have proposals to change longstanding contract language centered around various aspects of the grievance process. It appears that the District and its employees have historically had a good working relationship. Other than a few grievances filed during the term of the expired contract, neither of the parties could recall any grievances being arbitrated *during the previous 20 years.* All of that seemed to change in the past few years for some reason. One gets the sense that the relationship between the District administration and the Local Union representatives is not as good as it has been, and that this may be the basis for many of the "language change" proposals that are on the table. If this is the case, as I believe it is, neither party may be anxious to change their positions on many of the issues involved in this case. However, I think that in order to get an agreement, it is necessary for both sides to try to compromise their positions, a bit more than has been the case. The parties owe it to themselves and to the students they serve, to preserve the good labor relations which has existed for so many years. I hope that the recommendations made in this report serve as the basis for a mutually acceptable agreement in the very near future.

Preliminary Observations.

It will serve no useful purpose to set forth information about the parties, except in a very conclusionary manner. The parties provided information that Madison School District is a public school system in Lenawee County, Michigan. It is located in close proximity to the City of Adrian. The District has approximately 1280 students at the present time. The District operates

two buildings, one which houses Kindergarten through fifth grades, and one which houses sixth through twelfth grades. There are 96 certified school teachers working in the district. The District had a general fund budget of $12,101,660 in the 2005-2006 fiscal year. $12,100,284 was appropriated for general fund expenses. At that time, the District had an undesignated fund balance of $3,077,432. The undesignated fund balance has been reduced to 2,441,631, including a $311,000 budget reduction resolution, in 2007-2008. The 2005 pupil foundation allowance was $8,406.

Each party produced written position statements and documentary evidence in support of their respective positions on each of the issues in dispute. Likewise, each party had the opportunity to participate in an oral presentation of the highlights of the case to the factfinder. I have taken into consideration the information provided to me in the written position statements, and the documentary evidence that was produced in support of the respective parties' position on each of the issues, as well as the clarification which was provided by the oral presentations of counsel.

I have considered the information presented with respect to each issue, and have attempted to provide the parties with my assessment of the merits of the positions each of the parties have taken on each issue in dispute. It is my hope that this report will serve as the basis for further negotiation between the parties, and ultimately, a successful contract negotiation.

My recommendations follow seratim:

1. Association Days (Article III, Section G).

Both the Board and the Association advance Article III, Section G as an issue in this fact-finding. The Board of Education proposes to make the following ~~deletions~~ and **additions** to the current language Article III, Association Rights, Section G, page 5 provides in pertinent part:

> Representatives of the Association shall be released from regular duties ~~without loss of salary~~ up to four (4) days per year for the purpose of participating in special area, regional, or state meetings of the Michigan Education Association, or for Association business as deemed appropriate by the Association President. **The Association shall reimburse the District for the cost of the released employees' per diem salary, including FICA, retirement contribution, and insurance benefits.** At least two (2) of the above days shall be used for the purpose of attending Association sponsored school improvement, curriculum and/or professional/instructional development, **or** public relations meetings as deemed appropriate by the Superintendent after consultation with the Association President.

The Board takes the position that although association release time is disruptive, it is willing to release teachers for Association business, but it is not willing to pay the released teacher's salary when such time might be used for Association business which might be contrary to the District's interests. The Board takes the position that the costs of release should be borne by the Association. The Board points out that it costs the District's taxpayers about $2,200.00 per year to cover the costs of releasing the current Association president. The Board indicates that at some point the Association offered to cover the costs of the 'substitute teacher' hired to cover the teacher who is on Association business, which is currently about $93.00 per day, but if the Association wants teachers to have such leave time, it should be willing to pay the costs.

The Association takes the position that the four days for Association business should be provided without additional financial constraints. Further, since there is a finite number of days, there should not be any further restrictions. The Association states that it has very few days in which to do its business, and that any additional restrictions will have the effect of stifling union activity. Further, this restriction is said to be unparalleled among other comparable districts. (***See*** large tab #3, Exhibits 1 through 8). The Association asserts that the Board's attempt to gain approval or disapproval rights over the usage of Association leave days, and the attempt to charge the wages, FICA and benefits is really a draconian attempt by the District to intimidate the Association into not doing any business during the school day.

In my opinion, it cannot be assumed that the District receives no benefit from the Association's use of "release time". Without doubt, quite often the use of the time leads to a grievance or other administrative action, but I think that quite often the opposite is true. Four days does not seem like an inordinate demand on the part of the MEA. It appears that the parties have been able to live with the current contract language for quite an extended period of time, and there is no real evidence of any substantial abuse of that privilege. Likewise, there is no substantial evidence that seeking the Superintendent's "prior approval" for the use of two of the days has been a significant problem or unduly cumbersome.

The District obviously incurs an expense when it provides paid Association release time. However, the four days of Association release time is an expense that previous district negotiators have been willing to accept and continue, apparently for many years. The previous contract negotiators have been able to reach agreement with the four days of Association release time left intact. Likewise the Union has accepted the Superintendent's involvement in the process for many years. None of these facts mean that this language has to continue in perpetuity. However, it is always easier to negotiate contract language if the parties are solving a real problem, as opposed to a theoretical or philosophical problem. At the hearing, there was no real evidence that either of these practices had caused *any*

substantial problem for either of the parties, and because it certainly appears that these issues are distracting the parties from their negotiations of the wage and insurance issues, it is my recommendation that these parties try to live with the language for another few years, and retain the current contract language.

FACT-FINDER'S RECOMMENDATION REGARDING ISSUE NO. ONE, "ASSOCIATION RELEASE TIME".

It is my recommendation that the CURRENT contract language be retained in the successor collective bargaining agreement for Article III, Section G.

2. Association Days (Article III, Section H).

The Association proposes that the "release time" provided for by the current language in Article III, Association Rights, Section H not count against the four (4) days provided for by Section G:

> A teacher engaged during the school day in negotiating at the request of the school district on behalf of the Association with any representative of the school district or participating in any professional grievance negotiation, shall be released from regular duties without loss of salary.

The Association points out that the time contemplated by Section H is for the purpose of "joint meetings", and that the Employer can indirectly control this usage by not agreeing to meet during certain times. The Association indicates that collective bargaining agreements from Districts in the surrounding area contain language similar to that proposed by the Association. (***See,*** Exhibits 1 though 8). The facts do not disclose what practices the parties have followed in the past with regard to processing grievances and the like, but I gather that these activities have been largely, if not exclusively, handled during non-instructional time. Although the contract does not specifically state, it has apparently been the practice that the time spent processing grievances and negotiating during working hours has been counted against the four (4) days. A combined total of four (4) days for all of these various functions does not seem like an excessive amount of time. The Association suggests that comparable districts provide more time than is provided by Madison Schools. (See, Union Large Tab 2, Exhibits 1 to 8). However, a brief review of these documents does not unequivocally establish that this is so.

The Association's proposal does not seem to be unreasonable. As I understand the proposal, the Association asks that time spent in negotiation and grievance meetings scheduled *at the request of the District, during work time* not be counted against the four Association release days. Arguably, if the matter is important enough for the District to ask for the meeting during work time, it would seem that some agreement could be worked out where the District would provide release time to some limited number of representatives. However, the parties have apparently lived with this language for quite a long time. In the absence of some indication of the likely cost impact, and some evidence that the current language has actually interfered with proper handling of union activities, the language should not be changed at this time. It is my recommendation that the current contract language be retained.

FACT-FINDER'S RECOMMENDATION REGARDING ISSUE NO. TWO, "GRIEVANCE PROCESSING TIME COUNTS AGAINST FOUR (4) DAYS OF ASSOCIATION LEAVE TIME.

It is my recommendation that the CURRENT contract language be retained in the successor collective bargaining agreement for Article III, Section H.

3. Political Action Contributions (Article IV, Section L).

The Board proposes that the "payroll deductions" provided for by the current language in Article IV, "Membership Fees and Payroll Deductions". Section L be changed by deleting the following language:

> L. The Board agrees to deduct from the teacher's salary and make appropriate remittance for the following:
>
> ~~MEA/PAC(Michigan Education Association/Political Action Committee)~~
>
> .

The Board indicates that the Attorney General and the Secretary of State have both rendered recent opinions ruling that it is legally impermissible for a school district to deduct political action contributions under the Michigan Campaign Finance Act. **(See, Attachments 2 and 3).** The Attorney General's opinion issued on February 16, 2006 states in part:

> Section 57 states that a public body "shall not use or authorize the use of . . . public resources to make a contribution." There is nothing in the language of Section 57 that indicates a violation

> may be remedied or excused through a reimbursement mechanism. Indeed, Section 57 imposes significant penalties for its violation.

The Board takes the position that it cannot, and will not, continue a practice which has been determined to be illegal.

The Association points out that there are several school districts in the area which are still collecting the PAC contributions along with the local dues. (**See,** Exhibit No. 3). The Association believes that the practice of collecting PAC contributions along with Association dues can still be done and that the practice under the old collective bargaining agreement can be continued. While I believe it is accurate that many districts continue to collect PAC contributions, I do not believe that I have the authority to recommend that this District violate what the current Michigan Attorney General states as being the current law.

FACT-FINDER'S RECOMMENDATIONS CONCERNING ISSUE NO. 3, "COLLECTION OF POLITICAL ACTION CONTRIBUTIONS."

It is my recommendation that Board's position be adopted and that the PAC/payroll deduction language not be included in the agreement.

4. Class Size and other Conditions (Article VI, Section C).

The Board proposes that the parties adopt a letter of agreement, submitted by the Board as **Attachment No. 4**, which provides in part as follows:

> The Board and the Association agree that the District may implement as a pilot program a network based parent communications system, such as Edline, and the Association agrees that it will not grieve an Administrative directive to post progress/grades electronically on such a system. It is further agreed that the Association will not grieve appropriate discipline for the failure and/or refusal of a teacher to comply with such a directive.

The Board states that the District would like to implement this networked based system in order to improve communications between teachers and parents regarding student progress and grades. The Board indicates that during negotiations the Association took the position that the Board could implement such a program, but that the Association would grieve any

discipline of a teacher who fails or refuses to comply with a directive to implement the program. The Board asserts that for the system to be successful, teachers must cooperate in implementing the program, rather than failing or refusing to do so.

The Association states that not all teachers have computers. The computer system has "been down" many times this year.. Two times this year, at the time grades were to be distributed, the computer system was down. There is also a new County-wide system "going on-line" next year and technical training will be provided. The new system will apparently have a "grade posting" function. This new system will apparently make the Edline system obsolete. The District already distributes grades at PTC conferences and there have not been any complaints. This is a change in working conditions. No other district has made this proposal. The District says that all teachers have a district provided computer. When the system is down, the expectation is that teachers are excused from complying with the rule, until the system goes back up. There was some indication that teachers would be required to input any information that had accumulated during the system failure, but that fact is not entirely clear. The Association also points out that data is sometimes lost when the system fails, and the teacher is required to type the information back into the system. It was indicated that progress reports are distributed four weeks into the semester, and report cards are distributed nine weeks into the semester. The Association indicates that teachers routinely communicate with parents via notes sent home with students, with telephone communication, email and other forms of communication. There are conferences two times per year. The student code provides for a "demerit" system, and the teachers and principals are in communication with parents quite a lot. The teachers do a good job of communicating with parents. The teachers' experience with the District's technology is that the system is down a lot, and information gets lost and has to be re-entered. The Association's position is that the parties should wait for a year to implement this system after the county-wide system has been made available.

The collective bargaining agreement provides in Article II that the Board has the right to determine the services necessary to continue its operation, and to establish rules and regulations governing and pertaining to work. The exercise of such rights cannot conflict with the agreement, and according to Article III "no teacher shall be disciplined without just cause".

The Union argues with some considerable logic that the decision to implement the programs proposed by the District should be deferred until next year until the new county system has come on-line. The facts do not address the real value to the District of implementing EDLINE immediately as opposed to waiting a year. In my estimation that decision is fundamentally a management right of the Board of Education, subject however to the restriction that no employee be disciplined in connection with the implementation of that program without "just cause". A

collective bargaining agreement is at its heart and soul, a living and breathing instrument. The parties add a line or two or language, and then spend the next fifteen year fleshing out the language by the practices which are developed around the one or two lines they have added. I do not have the sense that the MEA seriously objects to implementation of programs of this type, or that the District has any thought of disciplining employees in connection with such programs without "just cause". I don't have the answer to many of the questions that were raised, such as "what happens if a teacher puts data into the system, but the data is lost due to a systems error?" Should the teacher be paid extra for putting the data into the system again? Clearly there are instances where the answer to that question is yes, and also instances where the answer to that question is no. My point is that the parties are used to working with a "work rules/just cause" process. These are all very fact intensive situations, and the parties cannot get hung up over trying to predict the outcome of every dispute that might arise around implementation and use of a "a parent communication" system over the next 10 or 15 years. These parties know very well how to use the "just cause" process, and implementation of a new computer based communications system, while complicated and replete with new and unknown issues , should not be a substantial stumbling block to a new contract . The District's proposal that the Union not grieve "appropriate discipline" justifiably causes some concern on the part of the Association. Is this a new standard, different from "just cause"? While I have not done exhaustive research, the proposal to provide Edline service may not be a mandatory subject of bargaining. *Grand Haven Public Schools and Grand Haven Educational Association,* 2006 MERC Lab Op CO2 L273.

It is my recommendation that the District be given the right to implement a web-based parent communication tool. This right, however, is subject to the normal and usual rights of employees to challenge the "just cause" for discipline and to file grievances challenging individual administrative decisions, such as whether an employee should get paid in a particular case for having to twice put data into the computer.

FACT-FINDER'S RECOMMENDATION CONCERNING ISSUE NO. 4, "IMPLEMENTATION OF ONLINE PARENT COMMUNICATION SYSTEM"

It is my recommendation that language similar to the following be included in the agreement: "The District may implement an internet based parent communications system, such as Edline, provided however, an employee may file a grievance to challenge whether there is 'just cause' for any discipline , or file a grievance challenging any other individual administrative decision issued in connection with implementation of the system, such as whether an employee should receive extra compensation for having to input the same data due to system failure, and the like."

5. Article VII, (Leaves of Absence, Section 1.4).

The Association proposes that Article VII, Leaves of Absence, Section 1.4 be changed :

> Teachers employed full time by the Madison School system, for fifteen (15) or more years will be paid a termination stipend at the end of the school year upon submitting a written resignation by March 1st of said school year. In the event a teacher resigns between March 1st and July 1st because of doctor substantiated medical reasons **or other major life event beyond the control of the teacher, said teacher** will receive the termination stipend. The amount of the stipend will be the current base rate of a substitute teacher's pay at the time said teacher leaves the Madison School system times two-thirds (2/3) the unused sick leave days the teacher has accumulated; limited to a maximum of ninety (90) days.

The Association states that it believes that teachers should receive upon retirement and/or resignation an amount equal to 100% of the present substitute teacher rate times 100% of the total number of unused sick leave in the teacher's sick day account. At present only two-thirds of the unused sick days are compensated. Compensation is based on the substitute teacher's pa rate. This formula has been in the contract for years. There are only 96 teachers in the bargaining unit, and this proposal will not be expensive to implement. The District has indicated a willingness to increase the sick leave payout to 100% of unused sick leave, but is unwilling to change the date that notice is due. It is stated that the earlier notice is necessary to assist in staff planning activities for the following year, and to have a better opportunity to employ more highly qualified staff.

It seems that the most contentious aspect of this issue is the date by which the employee must provide notice to the District. The District's position makes considerable sense. If the District has the employee's resignation notice by March 1st, the District has time to make reasoned hiring decisions for highly qualified replacement staff. It appears that the March 1st date has been in the contract for some period of time, and is not new to this contract, and I do not entirely understand why the Association is resisting continuation of this date. There was no indication that any employee had been unable to give notice by March 1st, or that this date had caused any problems whatsoever. In light of all the other issues to be resolved, it is my recommendation that March 1st be adopted as the primary date for this

benefit, and that the issue be resolved in the following manner.

FACT-FINDER'S RECOMMENDATIONS CONCERNING ISSUE NO. FIVE, "TERMINATION/SEVERANCE PAYMENT"

It is my recommendation that language similar to the following be included in the agreement:

> Teachers employed full time by the Madison School system, **WHO RESIGN WITH** fifteen (15) or more years, **OR WHO RETIRE WITH TWELVE (12) OR MORE YEARS**, will be paid a termination stipend at the end of the school year upon submitting a written resignation by March 1st of said school year. In the event a teacher resigns between March 1st and July 1st because of doctor substantiated medical reasons **OR OTHER MAJOR LIFE EVENT BEYOND THE CONTROL OF THE TEACHER, SAID TEACHER** will receive the termination stipend. The amount of the stipend will be the current base rate of a substitute teacher's pay at the time said teacher leaves the Madison School system times ~~**two-thirds (2/3)**~~ the unused sick leave days the teacher has accumulated; limited to a maximum of ninety (90) days.

6. Leaves of Absence,(Article VII, Section I).

The Board proposes that the "leave of absence" provided for by the current language in Article III, Section I be revised as follows:

> **Jury Duty/Subpoena –**
> Employees requested to appear for jury qualifications or services ~~and/or subpoenaed to be in court for school related business~~ shall receive their pay from the **E**mployer for such time lost as a result of such an appearance or service less any compensation to be received for such jury service up to a period of thirty (30) actual service days. If duty is of appearance only, or a part day, then the employee is expected to be on the job for the remainder of the day.
>
> **Leaves of absence with pay not chargeable against compensable leave shall be granted in connection with an appearance before a court or an administrative agency when subpoenaed as a witness in any case connected with the teacher's employment or the school, except that leave with pay shall not be granted in connection with unfair labor practice, arbitration, court or other hearings involving the**

Board and the Association or in cases where the teacher is a party to a claim against the District.

Much of the above referenced language has been in the contract for many years. There have been very few grievance arbitrations or other administrative proceedings. The Superintendent indicated that he was persuaded to agree to a change in the most recent negotiations when teachers complained about being subpoenaed to testify in child custody cases. Although the extent of the change was not described in detail by the parties, the District stated that the cost is much greater now than it used to be, and it will most likely be higher in 10 years. The District points out that there have been five arbitrations since this language was added, and the District has been the prevailing party in all five cases. The Association suggests that comparable districts provide this benefit to their employees. **(See, Exhibits 1 to 8).**

In certain respects, interpretation of this language as being applicable to witnesses who testify in arbitration proceedings appears to be inconsistent with Article XII, (E)(7) which provides that "The costs of the arbitrator shall be borne equally by the parties except that each party shall assume its own costs for representation *including any expense of witnesses*".

Superintendent James Hartley testified that this contract section was changed in the last round of negotiations when teachers voiced a concern about being subpoenaed to testify in custody cases. By actual intention, or by inartful drafting, the language has now come to require the District to grant leave to employees who testify against the district in arbitration and other administrative proceedings, not at all involving child custody matters. The Association witnesses indicated that this language was changed in the last negotiations, but that the intent was not to restrict the leave time only to matters such as child custody disputes.

The District does not want to have to provide paid leave to numerous witnesses who are called by the Association to testify against the District in arbitration, unfair labor practice charge proceedings, or other administrative proceedings. The District fears that the Association will prosecute non-meritorious grievances and fill the room with employees, if the District is required to give those employees paid leave time. It appears that the District already provides paid leave time to the *teacher* who is a party in a claim against the District. As is evident, expansion of this benefit to non-party witnesses without restrictions on the number of witnesses, whether they witness merely appears or actually gives useful testimony, and other similar considerations, has brought the parties into conflict. At the same time, there was no evidence that suggested that the Association had abused this privilege by "stacking" a hearing room full of non-essential witnesses,

or otherwise causing the District to experience excessive or unreasonable expense.

FACT-FINDER'S RECOMMENDATION CONCERNING ISSUE NO. SIX, "PAYMENT FOR WITNESSES TESTIFYING IN ARBITRATION CASES"

It is my recommendation that language similar to the following be included in the agreement:

> **Jury Duty/Subpoena –**
> Employees requested to appear for jury qualifications or services ~~and/or subpoenaed to be in court for school related business~~ shall receive their pay from the **E**mployer for such time lost as a result of such an appearance or service less any compensation to be received for such jury service up to a period of thirty (30) actual service days. If duty is of appearance only, or a part day, then the employee is expected to be on the job for the remainder of the day.
>
> **Leaves of absence with pay not chargeable against compensable leave shall be granted in connection with an appearance before a court or an administrative agency when subpoenaed as a witness in any case connected with the teacher's employment or the school, SUCH AS CHILD CUSTODY CASES. IF THE ASSOCIATION IS THE PREVAILING PARTY, THEN LEAVE with pay shall be granted TO A REASONABLE NUMBER OF EMPLOYEES WHO PROVIDE TESTIMONY in connection with unfair labor practice, arbitration, court or other hearings involving the Board and the Association or in cases where the teacher is a party to a claim against the District.**

7. Grievances and Procedures, (Article XII, Section G).

Currently, Article XII, Section G provides "The Association shall have no right to initiate a grievance involving the right of a teacher or group of teachers without his or their express approval in writing thereon."

The Association argues that the Association should have the right to file grievances to both protect its members and the sanctity of the collective bargaining agreement. Further, the Union says that such right complies with the "duty of fair representation" required by law. The Association states that other Districts comparable to Madison "do not have a similar restriction". Almost all of the comparable Districts have a contractual right

for the Association to file grievances on behalf of members for perceived contract violations. **(See Large Heading No. 8, Exhibits 1 to 8).**

The facts show that this language has been in the contract "for a very long time" probably back to about 1965. However, the Association points out that about one-third of the current teachers are non-tenured", and have been with the District for only 3 or 4 years, and sometimes they are not willing to risk antagonizing the Employer by filing grievances. The Association stated that this is not just a theoretical concern, and that although they didn't know exactly how many, there had been some young teachers who would have filed a grievance but were afraid to do so. The Association states that in serious cases, it had filed "unfair labor practice" charges in appropriate cases but that is not a suitable substitute for Association access to the grievance procedure.

The Board opposes a "carte blanche" grant to the Association to be able to file grievances "willy-nilly" without the consent of the teacher or teachers who are involved. The District believes that after almost 20 years of virtually no grievances, the current Association leadership has demonstrated a propensity to file grievances and the District says that it "is justifiably concerned that allowing the Association to file any grievances it wants to would be opening "Pandora's Box", and result in frivolous and vexatious grievances not approved by the affected teacher or teachers, and perhaps even be contrary to the wishes of the teachers. The District says that the problem will be compounded if it has to release with pay all of the teachers which the Association might ask to be present for arbitration hearings. 8).

The right of the Association to file circuit court complaints and unfair labor practices would not seem to be a reasonable substitute for the grievance procedure. While I recognize the need for the District to be fiscally responsible, it would seem that the potential for conflict between the Association and the District might naturally be higher today than it was 10 or 15 years ago, as Districts try to accomplish more and more with less and less funding. If one makes the assumption that the Association plays an important role in the parties' working relationship, then it would seem to make some sense to make it easier for the Association to have access to the grievance machinery, not harder. I agree that the "comparable districts" allow the Association to have direct access to the grievance machinery. In light of length of time the parties have

FACT-FINDER'S RECOMMENDATION CONCERNING ISSUE NO. SEVEN, "ASSOCIATION'S RIGHT TO FILE GRIEVANCES"

It is my recommendation that language be added to the collective bargaining agreement as follows: Local officers of the Association may file a "group grievance" which affects the interests of more than an individual employee.

Individual grievances, affecting only one employee, must continue to contain the employee's signature.

8. Grievances and Procedures, (Article XII, Section I).

Currently, Article XII, Section I provides "Where no financial loss has been caused by the action of the Board complained of, the Board shall be under no obligation to make monetary adjustments and the arbitrator shall have no power to order one." The Board says that under this language, if an employee prevails in an arbitration case involving some financial loss, the District has an obligation to make appropriate monetary awards, such as back pay awards. The District states that the language does not make it clear that any monetary award received by the teacher must be reduced by other compensation. It proposes the following language in order to codify this interpretation:

> Where no financial loss has been caused by the action of the Board complained of, the Board shall be under no obligation to make monetary adjustments and the arbitrator shall have no power to order one. **Any monetary award shall be reduced by other compensation which the teacher received as part of his/her duty to mitigate damages, including any unemployment compensation.**

The Board states that any compensation earned by the employee "as part of his or her duty to mitigate damages", as well as by any unemployment compensation, should be taken into account when the District's back pay liability is determined.

The Association states that although the concept of "mitigation of damages" is common in court proceedings, the employment question is often very different. For example, if an employee is wrongfully deprived of any off-duty position, such as a coaching assignment, in most instances any employee will not have the opportunity to "mitigate losses" by taking a night job at Wal-Marts for the same period of time. The Association sees the District's proposal as complicating both the labor relations and the grievance procedure with very little benefit to either party. The facts indicated that the language has been in the contract for many years without change, and that the issue had not come up in the past as far as anyone could remember. The Association also points to "other similar contracts", and conclude that none of these other contracts include this language as a working condition or as a condition of the grievance procedure. **(See Large heading No. 7, Exhibits 1 to 8)**.

The Union is concerned that adding language to this section will unduly complicate the grievance procedure and inject collateral issues into a process that is intended to provide an expeditious remedy in the employment arena. In a certain way, I agree. A great deal of time and energy can be spent arguing about whether Employee X could have worked a second job at the local grocery store even when he was working for the district, or whether that opportunity arose only because he was not working. The same cannot necessarily be said of certain fixed benefits such as unemployment compensation. To offset unemployment compensation makes sense, is reasonable, and is quite common. The parties should not have much difficulty reaching a compromise position on this issue. I do not recommend that the parties incorporate a "mitigation of damages" standard into the contract. However, reducing back pay awards by unemployment compensation is not unduly burdensome or difficult. However, as pointed out by the Association, the comparable districts do not generally have language "mitigating" back pay.

Furthermore, this language has been in the contract for many years, and there is no evidence that the language has been a real problem for either of the parties. Again, it is my belief that focusing on such issues has distracted the parties from an overall settlement, and it is my recommendation that current contract language be retained.

FACT-FINDER'S RECOMMENDATIONS CONCERNING ISSUE NO. EIGHT, "SETOFFS AGAINST BACK PAY AWARDS"

It is my recommendation that CURRENT contract language be retained.

9. Professional Compensation, (Article XIII, New Section).

Currently the collective bargaining agreement does not appear to provide for 'tuition reimbursement". The Association is proposing that a new Section be added to the contract which would require the District to pay the cost of tuition for classes taken by teachers.

The Association proposes that the District be required to pay for a tuition reimbursement plan ($150 dollars per credit hour) for hours beyond the continuing certificate. The District opposes the Association's proposal because it could cost the District a significant, but indeterminable, amount of money. Further, the District says that employees are already being compensated for completing additional classes, because the District pays

the teacher a higher salary as the teacher moves from one salary lane to another. The Board indicates that it would consider the following tuition reimbursement language:

> The District will support the acquisition of additional graduate semester credits (or pro rated term credits) for teachers that have obtained their Professional Certificate and take additional courses to earn their Master's Degree. In addition, to the cost to the District for reimbursement provided in Article VI, Section D.3., each year of this agreement (August 25th to August 25th) the District will provide up to $6,000 total for all teachers for graduate tuition semester credit hours reimbursement. To be eligible for reimbursement, a teacher must:
>
> a. Have already obtained his/her Professional Certificate.
>
> b. Provide verification by September 1st of the year the class was taken that he/she enrolled in and successfully completed, with a grade of "B+" or better, a graduate course leading to the teacher's attainment of a Master's Degree. (A course which has more than 50% of its session hours on-line electronically shall not be eligible for reimbursement).
>
> c. Provide verification of the tuition amount paid for the course. Reimbursement shall be the actual amount of tuition limited to $125 per semester credit hour (pro rated for term credit hours) minus any grant or scholarship that was received for the course.
>
> d. Be an employee of the District at the time the course was taken and at the time reimbursement is provided.
>
> The District shall provide reimbursement up to the limit of the funds available ($6,000) no later than the first pay period in October. If the total requested reimbursement exceeds the funds available, reimbursement shall be prorated based on the actual costs of the tuition for the courses qualifying for reimbursement minus any grants or scholarship that were received for those courses.

Tuition reimbursement provisions are very valuable benefits, both to the employer and to the employee, especially in a public school setting. The employee benefits by having a portion of his or her educational expenses reimbursed by the employer, thus increasing access to higher education, and the employer benefits by having a more educated work force, which is particularly pertinent where teachers are involved. However, this particular benefit has not previously been included in any of the prior contract settlements. For better or worse, the parties have always concluded that they could live without this particular benefit. Again, while this does not

mean that the language should never be added to the contract, when the parties have unsuccessfully struggled so hard to reach economic settlement on wage and insurance issues, I do not recommend that this benefit be added at this time.

FACT-FINDER'S RECOMMENDATIONS
CONCERNING ISSUE NO. NINE, "TUITION REIMBURSEMENT"

It is my recommendation that CURRENT contract language be retained, and both parties withdraw proposals for tuition reimbursement.

10. Remuneration, (Article XIV, Section A).

The health insurance issue is the most complex dispute in these negotiations. There are a number of collateral issues, including the question of implementing a Choices II program; upgrading the current vision and dental coverage; increasing the opt-out benefit; and settling the "retroactivity" issue created by the parties failure to reach an agreement in the 2006 school year. Currently the contract provides the following:

> A. The Board shall provide without cost to the teacher the following MESSA PAK for a full twelve (12) month period for the teacher and his/her eligible dependents.
>
> PLAN A - MESSA Super Care I Revised $100/$200 deduction XVA2 $5/$10 Rx . . .
>
> The Board and the Association recognize the need to control the rising costs of insurance. Therefore, it is understood, that the Board shall provide the above MESSA Super Care I PAK for the duration of this agreement. If in the second and third year of this agreement, the Board can provide the same level of coverage or better in the areas of Long Term Disability (L-T-D) Vision and Dental (while maintaining MESSA Super Care I for health), at a lower cost than that of the PAK, then the Board shall have the right to change insurance company(ies) for L-T-D, Vision and Dental. . . . [I]n 2005-2006 the employee shall be responsible for any annual increase in the health rate above 12% ($1,027.57) for PAK health rates and . . . for non-PAK rates, 12% for single ($507.60), two-person ($1,137.84), and full family ($1.264.18).

The Board has proposed that from the "time an agreement could have been ratified" , and the insurance provisions could have been implemented by MESSA, (approximately March 1, 2007) through June 30, 2007, employees could elect to continue Super Care I with a $5/$10 prescription card, or change to MESSA Choices II with a $5/$10 prescription card. During this period, the Board would have increased its contribution to $1,169.16 per month. (See District Attachment 5). The Board states that for the 2006 school year, the premium for Choices II with a $10/$20 card was $1066.76, which is approximately $40.00 per month more than employees were paying for SC1, "but there are no co-pays". The District's numbers assume that the entire group elected Choices II, and that assumption is incorrect, the Board would be required to pay $87.00 more per month for Choices II enrollees. In general, the District's position is based on the assumption that all employees take Choices II, because if less than the entire group elect Choices II, then the costs for Choices II will be billed at a higher rate by MESSA. In this case, the District expects the employee's share of the cost to be proportionately larger. The District's position is that if the parties had implemented the Choices II program in the 2006 school year, the savings would have been significant. The difference in the total annual costs of the Districts insurance proposal and the Association's insurance proposal is estimated to be $274,000.00. ($200,000 of that cost is the expense of staying with Super Care I; $34,000 is the approximate costs of upgrading the LTD coverage; and the increased costs of the "opt out" proposal is about $41, 500.)

The Board's position is that effective July 1, 2007, the District would pay for MESSA Choices II health insurance with a $10/$20 prescription card, or employees could continue Super Care I with the $5/$10 prescription card. During this period of time, the premium for Choices II wth a $10/$20 prescription card is $1,113.30, and the corresponding premium for SC1 with a $5/$10 card is $1,337.42, or $224.06 more per month. Thus in this case, employees who elect SC1 will be required to pay $224.06 plus an incremental share of the increased costs of the Choices premium due to not all members electing Choices II with $10/$20 card.

Effective July 1, 2008, and continuing into the fourth year of the agreement, if there is a fourth year, the District and the teachers would equally share the the amount of the month premium increase over the previous year as if the whole group took the MESSA Choices II with the $10/$20 drug card, although employees could continue to exercise "product choice" if the employee paid the extra cost of the Super Care I. The Board points out that as shown in **Attachment 6**, approximately 85% of the teachers in Lenawee County take MESSA Choices II with a $10/$20 prescription drug co-pay. Choices II is being promoted as a means of reducing the costs of providing health insurance to employees. **(See, Attachment 8, 9 and 10; See also, Association Exhibit 9 and 10).** Only about 16% of the 1040 teachers in the county still have Super Care I.

The Association states that the insurance issues are "terribly important" and are the "lynch pin" for settlement of this ongoing contract negotiations. The district teachers are willing to accept a "product choice" package, the same as the District, but their co-pay numbers are different. The Association says that the District should pay 93% of the costs of SC1 coverage, and 95% of the Choices II coverage, with the employee required to pick up the balance of the premium. The Association also takes the position that the "opt out" payments to employees who accept "cash in lieu of health insurance coverage" should be increased so as to minimize the overall costs to the greatest extent possible.

The Association argues that there are still 102 Districts in the MESSA "southern zone" of the state which provide SuperCare I to employees; 40 which provide Choices II; and 16 which provide employees with the option of SC1 or Choices II. The reason for this is that the SC1 program is the traditional program and a bit more expensive, whereby MESSA Choices II is a PPO which is less expensive. In the MESSA "eastern zone" (Wayne, Oakland and Macomb Counties) 22 Districts provide SC1; 9 provide Choices II; and 27 provide what these parties call "product choice", or the option to select either SC1 or Choices II. **(See, Exhibits 12 and 13). Exhibit 9** shows that the 2007-2008 rate increase of 1.95% is extremely low in today's health care market. Most groups, including Madison Schools are getting a PAK rate which lumps all the insurances together in order to get a discount which generally decreases an employer's insurance costs. (See, Exhibit 11).

The Association also points out that retroactive payments to teachers to reimburse them for the increased insurance costs which were incurred by District teachers "is absolutely critical to getting the teachers to reach a settlement". On July 1, 2006, the new Full Family health insurance premiums rose from $1,027.57 per month, to $1,252.51 per month. Teachers were required to pay $223.94 per month towards the costs of their health care. Some Association members believe that the Board has intentionally stalled in order to avoid reaching a new collective bargaining agreement. On July 1, 2007, the premium rose again to $1,337.42 per month, and the members co-pays rose to $309.85 per month.

FACT-FINDER'S RECOMMENDATIONS CONCERNING ISSUE NO. 10, "INSURANCE"

RECOMMENDATIONS

This issue consists of several "sub-issues".

(a.) The first question is whether employees are entitled to reimbursement of the higher insurance premium which they were required to pay due to the parties' failure or inability to reach agreement in a more timely manner.

It has been suggested that this issue is probably dispositive to an overall contract settlement. Each party blames the other for the delay in settling the agreement. The Association says that its members were forced to pay a higher share of the insurance premium due to the District's delays. The District says that it no longer has the ability to take advantage of any potential savings for the first year of the agreement, due to the Association's delays. I am not able to say that either party is solely responsible for the length of time that this contract has been in negotiation. However it was, if I understand the circumstances correctly, employees paid approximately $224.00 more per month, or $2650 for the year, more than they would have, had the contract been settled. The District has provided a "costing" of the insurance proposals which shows that costs would increase about $274,000.00. Unfortunately the "retroactivity" issue was not "costed out" by either of the parties, but given the number of teachers in the bargaining unit, and the above assumptions, this could be a very costly item.

Every day of delay puts the parties further apart. Teachers are still paying more insurance premiums than they would if the contract were settled, and the District's potential ability to realize savings by switching employees to MESSA Choices II also diminishes as each day goes by. This decision is not going to get any easier. The longer the delay the more difficult it is going to become to make the compromises that must be made to settle this dispute. It is my recommendation that premium payments made by employees in 2006 not be reimbursed by the District, or credited against premiums that become due in 2007, or subsequent years.

(b.) The second issue is the manner in which a MESSA Choices II health insurance plan should be implemented. I recommend the following:

2006-2007

I recommend that CURRENT contract language be retained.

2007-2008

The amount the District will pay for health insurance shall be based on a quote from MESSA Insurance for insurance as specified below as "primary coverage", and as if all teachers taking health insurance were to choose that insurance. Teachers will have the right to "product choice" for each year, but teachers choosing alternate coverage will be responsible for the monthly difference in premiums between the "primary coverage" provided by the District as if all teachers took the primary coverage, and the "alternate coverage" selected by the teacher. In addition, in each year, all teachers taking health insurance shall be responsible for any increase in premium that is a result of some teachers selecting the alternate Super Care I coverage. Any amounts owing by a teacher over the Board's contribution shall be automatically payroll deducted.

Primary coverage - MESSA Choices II with $10/$20 prescription drug coverage.
Alternate coverage - Super Care I revised coverage with a $100/$200 deductible, XVA2, and $5/$10 prescription drug co-pay.
(From July 1, 2007 through June 30, 2008, the District shall pay the amount quoted by MESSA if the whole group chose the primary coverage.)

2008-2009

Primary coverage - MESSA Choices II with $10/$20 prescription drug coverage.
Alternate coverage - Super Care I revised coverage with a $100/$200 deductible, XVA2, and $5/$10 prescription drug co-pay.
(From July 1, 2008 through June 30, 2009, the District and the teacher shall equally share the amount of the monthly premium increase over the previous year as if the whole group chose the primary coverage.)

2009-2010

Primary coverage - MESSA Choices II with $10/$20 prescription drug coverage.
Alternate coverage - Super Care I revised coverage with a $100/$200 deductible, XVA2, and $5/$10 prescription drug co-pay.
(From July 1, 2009 through June 30, 2010, the District and the teacher shall equally share the amount of the monthly premium increase over the previous year as if the whole group chose the primary coverage.)
(3.) The third issue is whether the current vision and dental coverage should be upgraded;

I recommend CURRENT contract language be retained.

(4.) The fourth issue is whether the health insurance "cash in lieu of" benefit should be increased.

I recommend CURRENT contract language be retained.

11. Salary Schedule "A"/Term of Contract.

The Board has proposed a salary increase of 1.5 percent for each of three years. The Board states that this increase is reasonable and is consistent with the rates of increase approved by comparable Districts. All other groups in the District have settled with a 1.5% pay increase. All other groups which have insurance have agreed to have their insurance adjusted resulting in considerable cost savings for the District with improved coverage for the

Board. The Board has also offered an additional $10,000 payment for those teachers who are on step 25 or above, who retire by June 30, 2009. The District says that the Association accepts the retirement incentive but has demanded an additional $600.00 improvement on Step 21 and 26. The cost of this will be approximately $30,595 for the three years of the agreement, plus a continuing "built in" cost in future years. **(See, District Attachment 18).** Wage costs for 2006 will be in excess of five million dollars. **(See, District Attachment 11).** The costs of the 1.5% wage increases, plus the cost of the step increments alone, requires over 87% of the District's available 2006 state aid revenue. **(See, District Attachment 19).** The cost of the District's proposal to increase wages by 1.5% will increase total wages to 6.3 million dollars. **(Attachment 11).** The cost of the 1.5% wage increase is about $280,000. The cost of the Association's 2.5% wage proposal, but including the increment, is about $342,000. Step increases will cost the District $322,710 in 2006-2007. This amounts to a 5.4% increase according to the District. District Exhibit 11 shows that for 2006 the total wages that will be paid is $5,098,584 under its proposal. Under the Association's proposal, the total wages that will be paid is shown to be $5,162,672. The difference is about $64,000, **not including** increased costs due to step increases, retirement and FICA contributions, which are significant.

The Association points out that almost every employer annually incurs cost increases due to step increases, and for comparable districts this is probably true. The MEA proposal will cost the District $80,000 more, not including the costs of the health insurance. The District also points out that it has already agreed to reduce the teachers' work year from 189 days to 186 days. **Attachment 20** shows that no other District in Lenawee, Hillsdale or Monroe Counties spend as much of their resources on total instructional costs, and on instruction salaries and benefits, as Madison Schools. Although the District has maintained a "relatively good fund equity **(See, District Attachment 14**), the fund equity is being eroded, and in the 2007-2008 school year the District has implemented approximately $311,000 in budget cuts. (**See, District Exhibit 15 and 16).** Other employee groups have settled for about 1.5%. **(Exhibit 17).** The District points out that the increases in costs are far greater than any increases it will receive in the foundation allowance. The District also points out that it ranks fifth in the County in terms of wages paid**. (District Exhibit 12).** Further some districts, such as Tecumseh are reducing services due to increased labor costs. **(See, District Exhibit 13).** Although the District continues to enjoy a 25.4% fund balance, the balance has been steadily decreasing, to about 19.5% in June, 2008.

The Association has proposed an increase of 2.5 percent for each of three years, plus a $600 increase on Step 21 and 26. The Association states, and demonstrates in **Association Exhibit 14** that there are 12 individuals on the BA schedules at Step 4 or less; there are 13 individuals on the BA+ schedules between Step 2 and 8, and 7 individuals on that scale between

Steps 10 and 21; there are 48 individuals on the MA schedule with 35 of those having less than 10 years, and 13 individuals having more than 10 years; on the MA+15 schedule there are only 6 persons, with 5 having less than 10 years, and one with more than 10 years; and on the MA+30 there are 10 persons, with 2 having less than 10 years, and 8 having more than 10 years service. In short, the Association states, this is a relatively young staff with their entire teaching careers ahead of them.

Madison has the third largest per pupil foundation grant in Region 3. (**See, Exhibit 16).** Region 3 consists of school districts in Washtenaw, Monroe, Lenawee and Jackson counties. Madison ranks 13th of 43 school districts in Region 3 in General Fund Balance. Madison ranks 4th of 43 school districts in Region 3 in General Fund Balance as a percent of total expenditures. The District's "30 year" teachers rank 27th out of 43 districts in the region. Madison is ranking behind many districts in the county which have less revenues and less of a fund balance. In comparing Madison to the rest of the County, in terms of ability to pay, the Union says that Madison ranks first or second, while the earnings and retirement ranks at the "half way mark". **(See, Exhibit 17).** The Union says that Madison's BA schedule is at the bottom 3 and 4 steps from Step 7 on to retirement, when compared to the districts in Region 3. **(See, Exhibit 19).** The BA+ schedule shows some improvement, with a consistent drop until the 20th year of teaching. In looking at the MA schedule where half the staff is, **(See Exhibit 14),** the Association says that the middle of the salary schedule drops to near the bottom, and does not rise until 20 years of experience. Lastly, the MA+ schedule "slides" from the start of the salary schedule to the 30th step around the 15th year of experience. In reviewing the ability to pay, it shows that Madison ranks 3rd out of 43 school districts, while 30 year average earnings rank 27th out of 46 school districts. **(See, Exhibit 19).**

Generally, I agree with the District's position that because it has been fiscally responsible, that does not necessarily equate to an ability to pay large pay increases. The State's economy, and the general disarray of the school funding system makes it extremely difficult for School Boards to anticipate the future. Many districts which have entered into contract settlements in the past couple years have been forced to reduce services, cut programs to students and reduce instructional and support staff. At the same time, the Union is correct when it says that all School Boards have to contend with the same issues. The future is very bleak and uncertain for all public schools, yet almost all of them have been able to negotiate contract settlements. It is my recommendation that a wage settlement be buttressed by a concomitant adjustment in the health insurance plan to

offset, partially at least, the cost of the increase in wages.

FACT-FINDER'S RECOMMENDATIONS
CONCERNING ISSUE NO. ELEVEN, "SALARY SCHEDULE".

It is my recommendation that the following "across the board" wage settlement be adopted by the parties:

2006-2007

1.5% added to each step of the contract wage schedule.
(retroactive to first date of contract.)

2007-2008

1.0% first semester; 1.5% second semester - at each step.

2008-2009

1.0% first semester; 1.5% second semester - at each step.

2009-2010

1.0% first semester; 1.5% second semester - at each step

12. Extracurricular activities (Schedule B).

The Association proposes that a comprehensive list of extra duties with the compensation being paid by the District be added to the contract. The Board has provided a list of extra-duty positions, together with the compensation paid to those positions, on pages 39-40 of its position statement. That list is incorporated herein by reference. There was no evidence that the list is incomplete or incorrect. As such it is my recommendation that the list be incorporated into the collective bargaining agreement.

FACTFINDER'S RECOMMENDATION
CONCERNING ISSUE NO. 12, SCHEDULE "B"

It is my recommendation that the list of extra-duty positions, and the compensation shown on the list, which is contained in the District's factfinding position statement, be added to the contract.

This concludes the fact-finding report. I sincerely hope that it is some assistance to the parties' in successfully concluding their negotiations and

achieving a successor collective bargaining agreement.

Respectfully Submitted,

Alvis Phillip Easter