

2268

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION

RECEIVED
2009 JUL 20 AM 8:35
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COM.
DETROIT OFFICE

In the matter of Fact Finding between:

WOODHAVEN-BROWNSTOWN
SCHOOL DISTRICT,

Employer

MERC Case No.: D08 A-0084
Fact Finder: Jerold Lax

MEA/NEA WOODHAVEN-BROWNSTOWN
EDUCATION ASSOCIATION,

Union.

Appearances:

For the Employer - John L. Gierak and Jeffrey A. Steele
Clark, Hill PLLC

For the Union - Gerald E. Haymond

REPORT AND RECOMMENDATIONS OF FACT FINDER

Procedural Background

The Union, in behalf of a unit of some 302 K-12 instructional employees in the Woodhaven-Brownstown School District, petitioned for fact finding on April 2, 2008 after negotiation and mediation had failed to produce a new collective bargaining agreement for the agreement which had expired on August 27, 2007. The undersigned fact finder was appointed by MERC on June 16, 2008, and during an initial prehearing conference between the fact finder and the parties on July 8, 2008, the parties indicated that negotiations and mediation were ongoing, but at the parties' request hearings were tentatively scheduled for September 11 and 15,

2008. The parties subsequently informed the fact finder that they desired to cancel these dates so that they could attempt to negotiate further, limit the remaining issues in dispute, and the fact finding hearings were ultimately held on February 25 and March 19, 2009. Pursuant to a schedule agreed upon by the parties, written briefs were filed on May 6, 2009 and reply briefs were filed on June 9, 2009. The parties continued negotiation and mediation, and requested that no report be issued by the fact finder any earlier than the week of July 13, 2009 to assure availability of party representatives to review the report.

Overview of Issues

Although the process of negotiation and mediation did serve to reduce the number of issues in dispute, the parties were unable to reach agreement on the major issues of health insurance and wages. Disagreement also remained on the question of the continuing availability of a sick bank, as had been contained in the expired agreement, or the replacement of the sick bank with long term disability insurance, as proposed by the Employer, although, as will be indicated in the subsequent discussion, the extent of disagreement may in fact have been minimal. On three other issues – calendar, Schedule D (special projects), and trimester – the parties were in essential agreement, but requested that the fact finding report reflect the nature of these agreements and any details which may require further negotiation concerning these three issues.

While the specific positions of the parties concerning the outstanding issues will be considered in greater detail below, it can be said in general that the Employer's basic position is that its budget is in a precarious condition in significant part because its revenues are threatened by the state's deteriorating economic condition, and that as a result any new contract must account for this condition by containing costs where reasonably possible, with health care being

the major area where costs must be contained and with wages also being an area with major cost implications. The Employer's approach results in proposals which would place an annual monetary cap on the per-employee amount to be expended for health insurance, and which, while allowing some wage increases, would keep these increments at minimal levels. The Union questions whether the Employer's financial condition is as dire as suggested, and proposes as a sufficient method of containing costs that there be some modification in insurance coverage rather than a cap on insurance expenditures, which, in the Union's view, would permit higher wage increases than those proposed by the Employer. It is the Employer's contention that even its proposals would result in deficits and serious fund balance (reserve) implications over the course of the fiscal years at issue (2007-8, 2008-9, 2009-10) but that the Union's proposals would result in consequences even more severe.

In assessing these positions, some initial judgment must be made concerning the economic capacity of the Employer to accommodate one or another set of proposals, since ability to pay it at least one factor which must be considered. While, as the Union has suggested, the record does indicate that there have been a least modest increases in state-provided foundation allowances during the past 9 years as well as modest annual increases in student population except for the last year of that period, the record also supports the conclusion that the Employer's capacity to sustain significant cost increases is under serious constraints. Declines in state revenues due to many well-publicized factors including business closings and unemployment limit state resources available for future school foundation allowances and could result in a reduction of previously-available allowances. Potential declines in student population may further diminish available allowances. While the Employer has in recent years generally maintained a positive fund balance, it at no time approached the reserve amounts of 15 to 20% of

budget recommended by auditors or the lower 10% figure established by the Employer as a target, and reached its recent high of 6.27% largely as a result of a large non-recurring payment of back taxes. Although the Union has suggested that federal stimulus funds may be available to buttress resources available to local schools, it does not in fact appear that such funds will be available for these purposes to the extent the Union suggests. These economic generalities do not of course dictate any specific conclusions regarding the matters at issue between the parties, which should be evaluated, to the extent possible, in the context not only of ability to pay but of such factors as internal and external comparables and other benefits available to the employee in question. With this background in mind, the individual issues may be addressed.

Health Insurance

The Employer currently covers the full premium cost of the MESSA Choices health insurance program for members of the bargaining unit. The Union proposes that for the remainder of 2008-9 and for 2009-10 the Employer continue to provide MESSA Choices coverage, with the additions of a \$10 office visit co-pay rider and a \$200 per person, \$400 per family annual deductible rider, which would result in a premium savings to the Employer and additional health care expenses to the employees. The Employer, regarding the savings from the Union proposal to be insufficient, proposes instead that the employees may choose between the MESSA Choices plan or an Aetna PPO plan which the Employer regards as equivalent to the MESSA plan but less expensive, and that the Employer will cap its annual per-employee insurance expenditure at \$12,500 for 2008-9 and \$13,000 for 2009-10. Estimates were provided at the hearing that the Union's proposal would result in a savings to the Employer of some \$395,000 over the two-year period in question, while the Employer's proposal would result in a savings of some \$653,000 over the same period. (Employer Exhibit 80).

It has become increasingly well-accepted, both in general and by arbitrators and fact finders who are called upon to address such issues, that rising health care costs impose a significant economic burden upon employers who are contractually obligated to cover these costs and that some form of cost-sharing with the covered employees is appropriate, albeit with some recognition that if part of these costs are reallocated to employees, appropriate attention should be paid to the ability of the employees to accommodate this shift. Cost-sharing can be approached in a number of ways, including an increase in co-pays and/or deductibles which are paid by an employee, thereby having the potential to reduce overall premium costs to the Employer. This is the approach advanced by the Union in the present case. The Employer's approach in this case would appear not only to enable the Employer to place a greater and more predictable limit on its costs, but to allow the employees a choice between retaining the coverage from a provider they have traditionally preferred, albeit with the potential for additional cost to them, or choosing coverage which might initially be of lower cost, though perhaps – despite Employer protestations to the contrary – with less satisfactory benefits and/or service. It is noteworthy that, according to the record, the Employer's administrative and support units have agreed to health insurance coverage which contains caps of the sort proposed by the Employer here. (Employer Exhibit 69).

Given the Employer's justifiable need to contain costs in light of existing and anticipated economic conditions, given the fact that health insurance is increasingly recognized as an area where cost containment is reasonable, given that other units of this Employer have accommodated caps on employer health care obligations, and given that the Employer's proposal allows some degree of choice to employees as to provider of health care benefits, it would be my recommendation that the Employer's proposal be adopted. I would add that while I have

recommended the Employer's general approach of imposing caps on its health care expenditures, and while the record does not demonstrate that the specific caps suggested by the Employer are unreasonable, the parties of course remain free to agree on an alternative approach to the containment of health care costs, or to different numerical caps even if a capping approach is adopted.

Wages

The Union proposes that the employees receive scheduled wage increases of respectively 1%, 1.25%, and 1.5% for the years 2007-8, 2008-9, and 2009-10. The Employer proposes a 1% off-schedule increase for 2007-8, a 1% off-schedule increase for 2008-9, and for 2009-10, the addition of a new step 11 at the top of the wage schedule with a 1% off-schedule increase for employees at the new top step, with wages frozen at lower steps, unless the 2009-10 foundation allowance is increased over the 2008-9 allowance with no proration having occurred in 2008-9, in which case employees may advance a step and be paid scheduled step increases. The Employer also proposes that certain categories relating to educational attainment be eliminated from the wage scale so that fewer opportunities for wage increases would be available. The record contains an estimate that the Union's proposal cost would in total some \$1,960,000 and that the Employer's proposal would cost some \$765,845 (Employer Exhibit 80).

From the standpoint of the impact on the Employer's financial situation, it is clear that the wage issue cannot be viewed in isolation from the health insurance issue, or from the issue of sick bank/LTD which will be discussed subsequently. The Employer suggests that the Union's position on these related issues may have represented an effort to reduce health care costs so that the Union's proposed wage increase could be justified, but in the Employer's view the health care savings proposed by the Union cannot support the Union's proposed wage increase. As

earlier noted, an estimate in the record suggests that approaching health care as I have recommended would result in cost savings to the Employer of some \$653,000 for the remainder of 2008-9, and 2009-10. Since the Union's wage proposals, if adopted in their entirety, would, by an estimate in the record, increase costs for 2007-8, 2008-9, and 2009-10 by some \$1,960,000, these proposals would clearly eliminate any budget protection sought by the Employer, even taking into account that as part of its wage proposal, the Union offered to relinquish certain payments for extracurricular activities as provided in Section B of the existing contract, the relinquishment of which, according to the record, would result in an additional savings of \$58,000 to the Employer.

The appropriate means for evaluating the wage proposals, however, does not necessarily involve seeking some mathematical equivalent between potential cost savings to the Employer regarding health care insurance and potential additional wage costs to the Employer, though the two issues are obviously related in determining whether an overall settlement is consistent with the economic realities of the situation. Other factors, such as internal and external comparables and other benefits received by the employees, are also relevant to the extent they provide any useful guidance. If internal comparables are considered, the record would suggest that the administrators within the district have received greater increases (1% in each of the fiscal years 2007-8, 2008-9, and 2009-10) than those proposed by the Employer for the employees in this bargaining unit, albeit less than those sought by the Union. (Employer Exhibit 69). There was considerable dispute between the parties as to which, if any, external comparables provided useful guidance, with the Employer noting several Wayne County districts as having received no wage increases in recently-bargained contracts and with the Union noting examples in some cases of annual increases of up to 2%, though with the Employer responding accurately that the

2% increases were principally at the highest salary step only. Given the variances among potential external comparables in such matters as health care benefits and foundation allowances, there is some merit in the Employer's suggestion that external comparables may be of questionable usefulness in resolving the present case. It might be noted, however, that Employees of the state appear to have received a 2% increase fiscal 2008, and while not scheduled to receive an increase by fiscal year 2009, are scheduled to receive a 1% increase in fiscal year 2010 and a 3% increase in fiscal year 2011. (Employer Exhibit 39). In the instant case, taking into account comparable data and in light of my earlier recommendation concerning health care and a later recommendation regarding sick bank/LTD, I believe it would be reasonable to recommend that on-schedule wage increases of, respectively, 1%, .25%, and .25% be awarded for 2007-8, 2008-9, and 2009-10. These increases would, based on estimates in the record, increase wage costs over the relevant period by some \$1,080,000, an amount greater than the amount required if the Employer's wage proposal were adopted but significantly less than the amount required by the Union's proposal. The cost of the recommended wage settlement would be offset significantly, though not entirely, by savings in health insurance and sick bank costs and would take into account the added expense employees might assume if my recommendation regarding healthcare were adopted. I would also recommend rejection of the Employer's proposal that additional salary allowances for the classifications of BA+18 hours, MA+15 hours, second MA, Educational Specialist, and Doctorate be eliminated, since the Union argues persuasively that even if this additional training is governmentally-mandated in many cases, the additional salary is justified by the educational costs involved.

Sick Bank/Long Term Disability Insurance

The expired collective bargaining agreement provides that a sick bank will be created for teachers hired prior to July 1, 2006, for use by teachers, in the event of illness, who have exhausted leave time otherwise available to them; for teachers hired thereafter, the Employer will provide long term disability coverage to deal with extended illnesses or disability. The Employer proposes that the sick bank be eliminated in the new contract and that long term disability coverage be provided for all employees, noting that the Union has already accepted this approach for teachers hired after July 1, 2006 and that this approach may result in savings to the Employer of some \$200,000 annually. The record suggests that the Union is not unwilling to accept the Employer's proposal, but has a concern with regard to employees who have availed themselves of the opportunity to "work off" sick bank days for purposes of increasing the salary upon which their retirement benefits will be based, and may therefore not be covered in the event of illness or disability during any waiting period required by applicable long term disability insurance. Because the parties have expressed a good faith intention to negotiate further with regard to the matter of coverage of employees who have "worked off" available sick leave, I recommend that the Employer's proposal to replace the sick bank with long term disability coverage be adopted, with the proviso that such further negotiation occur.

Other Issues

As noted at the outset, the parties have indicated that negotiations have resulted in substantial agreement on the issues of calendar, Schedule D (special projects), and trimester, but that the parties wish these understandings to be reflected in the fact finding report.

A. Calendar

The parties are in agreement that the school calendar will require 180 student days and 185 teacher days, hence that calendar is recommended, but the parties reserve

to negotiate further with regard to specific dates for events within that overall framework.

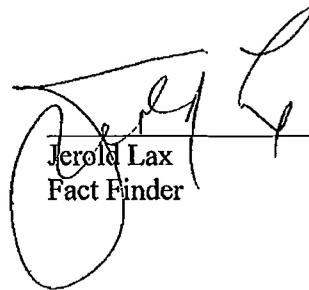
B. Schedule D

The parties have agreed to an hourly rate of \$30 for special projects approved under proposed Schedule D, and that rate is therefore recommended.

C. Trimester

The parties have agreed that the Employer's proposal for additional in-service hours in secondary buildings with 5 instructional periods per day would be dropped, with the understanding that this matter could be raised again in negotiating future contracts. The parties have further agreed that the issue of minutes of teaching time has been adequately addressed through the agreement regarding the calendar provision for 180 student days.

Date: July 17, 2009



Jerold Lax
Fact Finder