State of Michigan
Department of Consumer and Industry Services
Bureau of Employment Relations

In the Matter of Statutory Factfinding between:

MENOMINEE AREA PUBLIC SCHOOLS,
Employer

Factfinder

-and-

Ben Kerner

MENOMINEE CITY DISTRICT EDUCATION ASSOCIATION,
UPEA / MEA
Union.

______________________________________/

MERC Case No. L08 B-500

Hearing: February 18, 2010
Menominee, Mi.

FACTFINDER's REPORT, FINDINGS, AND RECOMMENDATIONS.

Present for part or all of the proceedings: Mark Barker, Erik Bergh, Zac Britton, Barbara Frisk, Jody Jaeger, Sharon Karasti, Jeanette Krause, Dave King, Marge Mathieu, Peter Mayhew, Betty Nyberg, Keen Pulver, Brenda Quake, Jamie Schomer, Shelley Spande, Bill Taccolini, Cindy Walker, Robert Witter, and others

Dated: March 29, 2010

BACKGROUND.

The School District is a medium-sized employer in south central Upper Michigan. The Menominee Area Public Schools (MAPS or Employer) employs 103 persons in the bargaining unit, teachers and others. It has a student enrollment of 1820.

The most recent collective bargaining agreement between the parties expired by its terms on June 30, 2008. The parties engaged in bargaining throughout the latter half of 2008. They had the benefit of two mediation sessions. In March 2009 they had a tentative agreement, which however, collapsed. By August 25, 2009, it was obvious to the Menominee City District Education Association (MCDEA or Union) that further proceedings were necessary, and it filed for factfinding. In January 2010, the Employer announced that it, too, would petition for factfinding. These proceedings emanated from those two petitions.

At the hearing on February 18, 2010, both parties were represented, as shown above. Both parties were afforded to present at full length their respective proposals and evidence in support of their proposals. The parties requested the right to file briefs, which has now been done. And the factfinder has had an opportunity to study the briefs and is ready to made findings and recommendations.

ECONOMIC CONDITIONS.

The Employer's budget is comprised 77% from the per pupil Michigan Foundation Grant. This year it is anticipated there will be a cut of $255 from the Foundation Grant of $7151 (a reduction of 3.6%).

A the same time the base to which the Foundation Grant is applied, enrolled students, has gone down by approximately 25% in the last few years and is anticipated to go down further. In June 2008, the Board was also informed that $655,000 in ARRA program funds would be taken out of its State funding. Superintendent Bergh initiated cut-backs including closing of one school; contracting out some bus routes; and, reducing custodial staff for a combined total of $600,000 in savings. Notwithstanding these efforts, the Board still predicts a deficit of $1.9 m. in 2010-11 if current operations continue without further significant cut-backs.

On the expenditure side, the cost of MESSA health insurance with the coverages teachers currently have went up 14% on July 1, 2009. The cost of funding retirement benefits will go up 2% in 2010 to 19.41% of payroll.

It is against this backdrop that the parties have bargained and have presented their proposals in factfinding.

DURATION.

The current impasse occurs as we round the corner into the last quarter of the second school year since the parties had a complete, approved collective bargaining agreement. When this report is issued, it may take an additional 2-4 weeks for both parties to satisfy themselves on the language needed; to bargain concerning matters left untended by the Factfinder's Report or further pursuant to the Factfinder's report; and to ratify (in the case of the Union), and to approve (in the case of the Employer), thus to enter into a final, binding collective bargaining agreement. The likelihood is that it will be May 1, 2010, before all this is accomplished. If the bargaining agreement were to expire on June 30, 2011, the parties would have just one year

in which to experience the relative peace and calm of a final, binding collective bargaining agreement.

The Employer argues that the times are volatile; it needs to have flexibility in the year 2011-12, to make changes, as now not foreseen in its budget, and in constituent parts of it, such as health care. However, in the end the Employer says it would prefer a longer-term contract, provided that "a workable formula and an insurance cap are accepted by the MCDEA." [Brief, p. 42]

The Union says that there is a need for stability in labor relations, and that the need would be satisfied by a 4-year agreement.

It appears to this Factfinder that the need is great, in this School District, for stability in labor relations. It would assist the parties only a little to recommend terms and conditions of employment that would hold sway for just 1-1/4 years, when, given the recent history, the parties will in all likelihood need to start bargaining for a successor agreement in December 2010 or January 2011 for an agreement to become effective in August 2011. It appears to be the better course to recommend that the parties settle their differences for a period of 4 years total, extending to August 31, 2012. All my following recommendations will be couched in the understanding that they apply for a 4-year agreement (of which 1-3/4 years have passed).

CLASS SIZE.

The Union proposes to adopt expired contract language, making class size an enforceable condition of employment (Article 7.1, " Class size limits shall be...."), but somewhat lowering the

limits for elementary and secondary grades. The Employer proposes to change the "shall be" language of the current contract to goals and guide posts.

The Employer stresses the need in times of declining enrollments—and possible layoffs--to orient class sizes to a potentially larger number than currently allowed. In general, the Employer wants more flexibility than current class size maxima allow.

The Factfinder is persuaded that historically the Union's interest in having well-defined maximum class sizes is a condition of employment that has a direct bearing on teacher well-being. There is no reason to abandon the formula in the parties' expired contract, either as to the mandated nature of class sizes or the number of students actually composing the class size. Thus, I recommend that the parties adopt the expired contract's provision.

EARLY RETIREMENT INCENTIVE.

This is a benefit to which retiring teachers aspire. Under the expired contract:

> A full-time teacher shall be eligible to receive the following stipend per month paid by the School District for fifty-four (54) months after the effective date of retirement or until the retiree becomes eligible to receive reduced old age insurance and benefits under Title II of the Social Security Act, whichever comes first... [For 2007-08: $350]
> Article 6.10(2)

The Union says this provision has historically been part of the contract and should remain intact.

The Employer stresses the fact that the Early Retirement Incentive, as currently structured, does not do anything to encourage a teacher to retire early. It is just another benefit, to

which the teachers have become accustomed; and should be deleted from the contract under the current circumstances where the Employer faces a deficit in 2009-10 and even larger deficits in ensuing years. It believes the Early Retirement Incentive , offered every year, is not necessarily an inducement to retire, but is a form of deferred compensation. It is the Employer's position that the teachers do not need any deferred compensation, since they are fairly compensated through salary and insurance benefits as they work. [Brief, p. 36]

The evidence is largely bargaining history; and the parties have two different versions of the bargaining history. From the testimony received, I cannot conclude that the Employer ever enunciated an intent at the bargaining table to reduce this benefit to a nullity. On the other hand, I cannot deduce that the Union ever insisted on this benefit by itself to impasse. It is my conclusion that based on the 2009-10 fiscal year deficit situation and the likelihood of mounting deficits (i.e., the Employer's ability to pay), the parties should delete this benefit from their 2008-12 contract, to the extent it has not been effective in 2008-09 and 2009-10.

U.C. REIMBURSEMENT.

The expired contract allows for teachers who receive notice of layoff at the end of a school year to collect unemployment benefits throughout the summer months, while they are still on payroll. A provision in the unemployment statute [MCL 421.27(i)(1)] apparently allows this for teachers. Then, if returned to work in September they no not have to reimburse the school district for their unemployment benefits received. The school district has to reimburse the State of Michigan dollar-for-dollar for every dollar of unemployment benefits received by its employees.

The Union says that 14 out of 16 school districts it surveyed and claims as comparable employers allow for such a practice. Only one requires the reimbursement by the teacher of the school district. One also allows it to the extent permitted by law.

The issue turns, not on the practices of companion school districts, but on the equities. It is simply inequitable for the Employer to be required to reimburse the State for benefits extended to ostensibly laid-off employees; and not to obtain reimbursement from them when it turns out they will not be laid off after all.

I recommend that the parties settle on the equitable basis that the teachers who are earning pay in the summer months and who are favored with unemployment benefits in the summer should reimburse their Employer if in fact they are recalled to work in September.

AUTOMATIC STEP INCREASES.

Under current practice and the expired collective bargaining agreement, then the contract expires, the Employer is obligated to pay automatic step increases and pay any health insurance cost increases during the hiatus between the old contract's expiration and the new contract's ratification and signing. The Employer would defer any automatic increases. It wants the contract do so state, so that the term or condition of work is not interpreted as it was in *MESPA v. Jackson Comm. College*, 187 Mich App 708 (1991). See also *Sault Ste. Marie Area Bd. of Ed.*, 8 MPER P 26,006 (MERC, 1994).

The Union says that the tradition recognized and stated above places the risks and rewards of bargaining in the right place; and that expressly denominating that step increases and /or insurance premiums shall not be continued during the bargaining period places an unwar-

ranted burden on the Union. In addition, the members have earned these benefits; says the Union:

> Every comparable used by both parties represented have salary grids that contain increments (Steps) and lanes that represent educational attainment levels. The compensation for steps and educational advancement is earned through the implementation of rules both parties historically agreed to through negotiations.
> [Union Brief, p . 16]

The answer here is provided by the traditional factor of the bargaining history of these parties and the practices of other teacher units throughout the State. It is my determination that the Union argument that teachers have earned what are essentially longevity increases and higher education bonuses is long enshrined in the traditions of our public schools. It would be a wholesale departure from tradition to block the automatic awarding of "step" increases for years of service and "lane" increases for educational attainment. These are part of the compensation for which teachers work, and sometimes are the only increments received, in these difficult times. Thus, in sum, I recommend that the parties adopt the Union's proposal on this subject.

HEALTH INSURANCE.

The Employer seeks changes here, first, to "add all available riders to reduce the cost of the MESSA plan in the current year. " By this proposal the Employer foresees reducing the cost of MESSA insurance from $18,688 per employee to $15,600. This works out to about $108,000 for the bargaining unit for the time period February-June, 2010. The Board would have the employee co-pay increased immediately to 10%.

Secondly, the Employer proposes to control future obligations by establishing an annual cap of $14,662 [viz., 94% of the MESSA plan's revised current estimated cost of $15,600]. This cap would be effective in 2010-11 and (presumably) in 2011-12.

These proposals are necessary, says the Employer, in view of the fact that the overall cost of MCDEA's group health insurance has increased by 96% in the last 13 years. In the last year alone, this unit's health insurance costs have gone up 14%.

Comparing the MCDEA bargaining unit with other MAPS groups of employees, members of each unit from the Administrative (not a bargaining unit) to the Maintenance, to the AFSCME units all pay 9% or 10% of the cost of their health insurance coverage. Extending the scope comparables to the broader economy, other public sector employees pay 10% or 11% or even 25% (federal employees, E'er. Exh. 97). The appropriate benchmark for us to keep in mind for this group, the MCDEA, is clearly the other employees of the same Employer. That figure is 10%. Thus, employee contributions in this range should not be considered excessive.

Regarding the Employer proposal to cap the Employer contribution in 2010-11 at $14,664 per year, the Board says, "A cap on insurance costs should have the effect of encouraging the MCDEA to come to the table with a realistic mindset, and a genuine desire to reasonably share in cost control strategies to the mutual benefit of the Board and employees." [E'er. Brief, p. 33]. Currently, says the Board, there is no particular incentive for MCDEA members to examine carefully available cost-saving measures on insurance costs and this has proven (in the Board's eyes) to be a stumbling block in past negotiations.

The Union says, "[T]he Employer's proposal is one of risk for the Association and no incentive for the Employer to settle timely." [U. Brief, p. 12]. Related to the subject of co-pays, the Union says, "The Association gets it and has responded responsibly in this district through insurance changes and premium co-pays in the past and presently is willing to do so." [U. Brief, p. 13].

Regarding willingness to change the premium co-pay, however, the Union has not made an offer in these factfinding proceedings. The Union has agreed to change the basic outline of the plan to a 10/20 Rx card/ $20 office visit/ $200/400 deductibles (from 5/10 Rx card). Except for the change just referenced, the Union makes a status quo offer.

I have reviewed the exhibits carefully. I have studied the arguments of the parties as expressed in their briefs. I am convinced that specific action must be taken now to reduce the amount of the health insurance premiums paid by the Board. It is in a financially non-viable situation. It is running a deficit in the current year. And, with the prospect of reductions in the Foundation Grant of $255 or more; and at the same time with the prospect of declining student enrollments, emergency measures must be taken to reduce Board expenditures.

That in itself does not mandate that the Union should give "take aways". But the facts show that the Union has been in a privileged position with respect to health insurance; other MAPS employee groups uniformly contribute 9 or 10% of their health care premiums. And, there is no solid reason why this Union should not contribute likewise.

Furthermore, the concept of a cap on Board health insurance expenditures is not altogether alien to the educational workplace. Both Iron Mountain and Stephenson have provi-

sions for annual caps. The bargaining concept of "inability to pay" informs my judgment about the appropriate resolution of the insurance issue for 2010-11 and 2011-12. The Employer's inability to pay is a traditional and statutorily recognized grounds for decision in interest arbitration cases (MCL 423.239 for police and fire). An insurance cap for Employer health insurance expenses is an idea whose time has come to Menominee. The proposal requires—and promotes—an absolutely serious outlook on cost management. I am confident that these parties, once they put behind them the hurdle of this 2008-12 contract will be able to rise to the challenge of cost management of their health insurance. I recommend that the Board's health insurance cost be capped at $14,662 per employee per year in 2010-11. This is in the same neighborhood as both Iron Mountain's and Stephenson's cap. [E'er. Exh. 90] The cap should continue thereafter until the termination of the contract on June 30, 2012.

SALARY.

The parties have agreed to freeze wages for 2008-09.

The Union proposes for 2009-10 a 1% salary increase to be applied to the salary schedule. The Union also proposes a 1% salary increase for 2010-11 to be applied to the salary schedule. In 2011-12 the Union proposes a graduated salary increase dependent on the amount of Michigan Foundation Grant increases as follows:

> If the Foundation grant is increased 0-$70, then the salary will be decreased by 0.25%.
> If the Foundation grant is increased $70-140, then there will no change in base wages.
> If the Foundation grant is increased more than $140, then the salary will be increased 0.25%.

In addition, the Union proposes changes in base salary for changes in the cost of insurance, for changes in the blended count of students, and to respond to an Executive Order of the Governor concerning school expenditures.

The Employer proposes no increase to be applied to the salary schedule in 2009-10. However, the Employer proposes a 0.5% increase to be granted off-schedule to those employees who do not have a step increase; and provided insurance is satisfactorily settled. The Employer proposes no increase in 2010-11. For the 2011-12 program year, the Employer proposes a graduated scale of salary increments depending solely on the factor of increases or decreases in the Foundation grant for 2011-12. Its essential components are:

> If the 2011-12 Foundation Grant is $7351-7400, the MDCEA 2010-11 [sic 2011-12] salary schedule shall be increased by 3%.
>
> If the 2011-12 Foundation Grant is $7301-7350, the MCDEA 2010-11 [sic 2011-12] salary schedule shall be increased by 2% and full step increments shall be paid.
>
> If the 2011-2012 Foundation Grant is $7251-7300, the MCDEA 2010-11 [sic 2011-12] salary schedule shall be increased by 1% and full step increments shall be paid.
>
> If the 2011-12 Foundation Grant is $7200-7250, the MCDEA salary schedule [in 2011-12] will be increased by 0.75% and half step increments shall be paid.
>
> If the 2011-12 Foundation Grant is $7152-7200, the salary schedule [in 2011-12] shall be increased by 0.5% and half step increments shall be paid.
>
> If the 2011-12 Foundation Grant is $7151, there shall be no increase to the salary schedule [in 2011-12], and one half of the step increments shall be paid. In addition, the salary schedule for new hires (attached to the District's Nov. 17, 2009 proposal) shall be effective July 1, 2011.
>
> If the 2011-12 Foundation Grant is less than $7151, no step increments shall be paid [in 2011-12], and there shall be a decrease of 1% to the salary schedule. In addition, the salary schedule for new hires (attached to the District's Nov. 17, 2009 proposal) shall be effective July 1, 2011.

> If the 2011-12 Foundation Grant is less than $7073, no step increments shall be paid [in 2011-12], and there shall be a decrease of 2% to the salary schedule. In addition, the salary schedule for new hires (attached to the District's Nov. 17, 2009 proposal) shall be effective July 1, 2011.
>
> If the 2011-12 Foundation Grant is less than $6995, no step increments shall be paid [in 2011-12], and there shall be a decrease of 3% to the salary schedule. In addition, the salary schedule for new hires (attached to the District's Nov. 17, 2009 proposal) shall be effective July 1, 2011.
>
> In addition, regardless of the Foundation Grant, a 0.25% off schedule increase shall be paid as soon as administratively feasible in December 2011 for each 30 student increase in the 2011 blended count above the 2010 blended count (based on the audited student enrollment count in the fall of 2011).

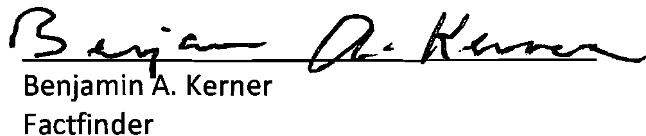
It should be remembered that the Board's proposal was responsive to the Factfinder's request that the Board provide an offer for 2011-12, when none had been provided in any of the earlier documents. Thus, the proposal above summarized was seen by the Union for the first time in its review of the briefs probably on March 23, 2010. The parties have not had an opportunity to bargain about the particulars of the Employer's plan or the Union's plan for that matter (since it was served when hearing was imminent, on February 18, 2010).

It should be obvious that both parties are curtailing or expanding their wage demands for 2011-12 based primarily (or exclusively) on the actual—rather than the projected—change in Michigan Foundation Grant. It is my belief that the parties, once they agree to an insurance article along the lines defined on pp. 8-11, will be able to work out a salary statement for 2011-12. I recommend that the parties start bargaining with the idea that the Foundation Grant increases or decreases will control the amount of salary increases or decreases. The "step" and "lane" increases, in accordance with my recommendation at page 8, should be considered a given.

The parties' resolution of the issue of 2011-12 salary increments, in line with the above recommendations, would be a signal achievement. I do not want to rob the parties of this opportunity. Therefore, I decline to make any more specific recommendation today on the subject of 2011-12 salary.

I endorse the salary provisions contained in the Employer's last best offer for 2009-10 (with one caveat) as being responsive to the overarching factor of the Employer's ability to pay. The caveat is that I recommend the Employer provide a 0.5% off-schedule amount to *all employees* in the bargaining unit, as soon as this current contract is finalized. Those who have recently achieved step increases should not be penalized in the grant of this one-time payment in lieu of a raise.

For 2010-11, I recommend that the Employer provide a 0.5% off-schedule amount to all employees in the bargaining unit, payable in a lump sum in January 2011.



Benjamin A. Kerner
Factfinder

Dated: March 29, 2010
Detroit, Michigan

Postscript:

"Beginning in the mid-1970's, I began to find myself in a series of roles in which I have participated in setting or controlling wages and salaries. These included sitting on three wage stabilization bodies during the Nixon and Ford administrations, as a director of two corporations, as a provost at a private university, as a president of a foundation, and as a trustee of a liberal arts college. In one of the corporations I serve as chairman of the compensation committee. In none of these roles did I find the theory that I taught so long to be of the slightest help. The factors involved in setting wages and salaries in the real world seemed to be very different from those specified in neoclassical theory. The one factor that seemed to be of overwhelming importance in all these situations was fairness."
Rees, Albert, "The Role of Fairness in Wage Determination." *J. of Labor Economics* II(i), 243.