

STATE OF MICHIGAN
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT FINDING BETWEEN:

SWARTZ CREEK COMMUNITY SCHOOLS,

EMPLOYER,

and

MERC Case No. D09 E-0672

SWARTZ CREEK EDUCATION ASSOCIATION,

UNION.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Hearing Location: 8354 Cappy Lane
Swartz Creek, Michigan

Hearing Date: May 27, 2010

Appearances:

For the Employer:

Martha Marcero, Attorney

James F. Bleau - Assistant Superintendent
Personnel and Business Services

Jeff Pratt - Superintendent

James Anthony - Oak Point Group

For the Union:

Tanya Pratt - MEA Uniserv Director

Arch Lewis - Financial Analyst

Rulesha Payne - MEA Uniserv Director

Eric Minore - SCEA President

Maureen McCallister - Bargainer and
SCEA Professional Rights and Responsibles

Kim Nicholson - K & M Consultant

INTRODUCTION

The Swartz Creek Education Association MEA/NEA is the exclusive bargaining agent for approximately 215 teachers who are employed by the Swartz Creek Community Schools in its one high school, one middle school and five elementary schools. According to the parties, numerous Collective Bargaining Agreements have been negotiated over the years with durations running from one to three years.

The most recent contract between the parties was negotiated for the 2006-08 calendar years and was extended for one year beginning August 2008 through August 2009. Bargaining for a new contract began on April 1, 2009 and twenty sessions were conducted between the parties. The parties had their first mediated session with Richard Ziegler on October 5, 2009, with four subsequent mediations, the most recent of which was on May 10, 2010, after the Fact Finding hearing was scheduled. On December 17, 2009, the Association had petitioned for Fact Finding.

PRE HEARING CONFERENCE

On March 9, 2010, a very lengthy Pre-Hearing Conference was held via telephone with the representatives of the parties to discuss the issues to be addressed at the Fact Finding Hearing, including the proposed comparables to be considered under the statute. After considerable back and forth discussion, the issues were narrowed down to the following three issues, and subsets of these issues, to be addressed at the Fact Finding Hearing:

WAGES

1. Wage increases (if any)
2. Length of any new Collective Bargaining Agreement

3. Addition of Step level increases
4. Wage increase for alternative education teachers .

HEALTH CARE

1. Whether the teachers should continue with their current health care provider, with modifications as proposed by the Union, or whether the health care provider should be switched to Health Plus Confinity Network PPO
2. Whether a Flexible Spending Account should be established

DAYS AND PLANNING CALENDAR

1. Continuation or discontinuation of Channel 1
2. Number of days for students and teachers

Both the School District and the Association submitted Pre-Hearing Briefs, outlining their positions and identifying and discussing in depth data supporting their respective positions and comparables. These Pre-Hearing Briefs were reviewed by the Fact Finder in preparation for the Fact Finding, which ultimately took place on May 27, 2010 at the administrative offices of the School District. At the Fact Finding Hearing, both parties, through their advocates, elaborated on the positions as set forth in their pre-hearing submissions and offered testimony in support of their positions and in opposition to the positions taken by the other party. At the close of the hearing, the Fact Finder offered the parties an opportunity to submit a short (6 pages) Post-Hearing Brief to synopsize their positions on the various issues to be addressed by the Fact Finder. Post-Hearing Briefs were submitted by both parties on June 18, 2010. Based upon a review of all of the Pre-Hearing and Post-Hearing submissions and the testimony and arguments at the Fact Finding Hearing itself, the Fact Finder makes the following analysis, discussion and recommendations as follows:

WAGES

1. and 2.: WAGE INCREASE AND LENGTH OF CONTRACT

As will become more clear in the analysis of the wages issue, the Fact Finder has combined two of the wage related issues for discussion, i.e., Wage Increase (if any) and Length of Contract, as the Fact Finder finds these two issues inextricably bound together both for discussion purposes and for recommendation purposes. There is apparent agreement on one aspect of the wage issue, i.e., because no contract had been agreed to for the 2009-10 school year, which is now already completed, both the School District and the Union agree that there should be a -0- increase for the teachers for the 2009-10 school year. After that there is no agreement whatsoever.

The Union, recognizing the economic climate that we are in, proposes a -0- increase for 2010-11, as does the School District. However, the Union proposes a four year contract with a .5% increase beginning in January 2012 for the 2011-12 year and a 1% increase beginning in January 2013 for the 2010-13 school year. The School District, on the other hand, wants a two year contract only, with no wage increases for the Union members during those two years. The School District had made one modification during the negotiation process to its 0 - proposal for its two year contract and that was if the teachers would agree to switch their health care coverage from MEBS Blue Cross Blue Shield to Health Plus Confinity Network PPO, by February 1, 2010, the School district would agree to a .55% wage increase (based presumably on the health care cost savings) for the 2010-2011 school year. The Union, obviously, did not agree.

Both parties discussed at length the economic considerations behind their proposals, with a great deal of discussion regarding the economic condition of the state and the effect that that economic condition has on the state funding of the schools throughout the state. The Union in its

closing brief did point out that based upon a significant number of retirements in June, 2010, the School District would be saving a lot of money, which could be used for wage increases for the teachers. Both the Union and the Employer offered comparables in support of their positions on the wage increase issue. Curiously, all of the Union's comparables, except for one, were of school districts outside of the Genesee County area. The Union asserted that these comparables best reflected districts similar to Swartz Creek and from these comparables the Union asserted that the Swartz Creek schools are relatively solvent but that their teachers are relatively underpaid in comparison to other teachers in comparable school districts throughout the State of Michigan; thus, justifying pay increases for its teachers. The School District, on the other hand, relied exclusively on in-county comparables, asserting that based upon these comparables the Swartz Creek teachers are well paid, and because of the dire current economic situation, the status quo should remain, i.e., no increase. The School District noted that while some of the schools districts that it looked to as comparables did give their teachers pay increases, these pay increases were approved before the severity of the Michigan economic down turn was apparent.

While the economic situation is obviously both unsettled and unsettling, the Fact Finder does not find any of the outside comparables of either party particularly compelling, in light of the fact that many of the school districts, both out-county or intra-county, have not negotiated current contracts. What the Fact Finder does find significant for purposes of the wage increase issue are the internal comparables, particularly those comparables as set forth in the School District's Exhibit 8. Exhibit 8 is entitled "Internal Comparables" and it demonstrates that none of the Employees of the

School District received pay increases for the 2009-1010 year. However, something very different occurs as it relates to the next two school years. For four different groups of employees, there are pay increases in both 2010-11 and 2011-12 as follows:

<u>Employee Group</u>	<u>2010-11 Wage Increase</u>	<u>2011-12 Wage Increase</u>
Principal Administrative Team (19 members)	1%	2%
AFSCME Union Employees (150 members)	1%	2%
Bus Mechanics (3 members)	1%	2%
IOUE Employees (5 members)	1%	2%

What these internal comparables graphically reveal is that despite the doom and gloom arguments by the School District, ability to pay is certainly not the issue, as the School District clearly has the ability to pay, because it can offer most of its other unionized and non-unionized employees 1% and 2% wage increases in 2010-11 and 2011-12, respectively. Contrast this with the position of the Union in this case, which is asking for no increase in 2010-11 and only .5% for one half of the 2011-12 year. What is the one variable that distinguishes this Union from all of the other Unions and employees in the School District? That variable is health insurance. All of the other employees, unionized or otherwise, have agreed to switch to the health care provider that the School District wants, i.e., Health Plus Confinity Network PPO; the SCEA has not so agreed. An even more graphic example that ability to pay has nothing to do with the issue of wage increases, is that the Employer

would have granted the SCEA a .55% increase in 2010-11 school year, but if and only if the teachers agreed to the Employer's preferred health care provider. Is the Employer's position justified? The Fact Finder believes based upon the comparables and the evidence that it is not.

While health care will be discussed more in depth in the next section of this report, the Employer can point to only two comparable teachers unions that have Health Plus Confinity Network PPO and apparently at least as to one of them it was imposed (Flint School District). Further, as will again be discussed more in depth in the next section, while there may be some savings (how much is clearly debated by the parties) based upon a switch from Blue Cross to Health Plus, it is not a justification for denying the teachers the small raise that they are asking for in the 2011-12 school year. Further, while the Fact Finder believes that the contract should be a three year contract, not four as the Union proposes, because the other internal contracts are three years, the Union acknowledges that it has always negotiated one to three year contracts in the past and because the economic situation when the parties sit down to negotiate a contract again in 2011-12 will hopefully be somewhat clearer going forward, on the basis of all of the evidence, the Union proposal to the extent that it pertains to the 2009-10, 2010-11 and 2011-12 is the more reasonable proposal

RECOMMENDATION

For all of the reasons as set forth above, the Fact Finder believes that for wage increase purposes, there should be a three year contract, with -0- wage increases for the first two years (2009-10 and 2010-11 school years), with a .5% increase beginning in January 2012 and for the 2011-12 school year.

3.: ADDITION OF STEP LEVEL INCREASES

With the core issue regarding wages addressed along with what this Fact Finder believes should be the length of any renewed contract, the next issue to be addressed is Step Level Increases. Unlike the basic wage increase issue and the health care issue, which follows, the parties spent little time discussing this particular issue. For the most part, the Employer's response to the issue of adding additional steps for wage increases for the teachers was that it would ultimately cause greater economic instability and was not justified under the current economic situation that the School District finds itself in. We have seen, however, in the previous section of this report that based upon the fact that the School District has given wage increases to virtually all other employees in the School District, that ability to pay is not in this Fact Finder's opinion a valid measure upon which to address this issue.

As with the wage increase issue generally, the Union has the better position. First of all, because adding additional steps will likely promote greater stability among teachers and foster a desire to stay with the School District, in general, the concept has appeal. Secondly, and most importantly, as was demonstrated by the Union, and not seriously challenged by the School District, comparable school districts, both those out-county comparables as relied upon by the Union and the intra-county comparables as relied on by the School District, have more step levels than what the Swartz Creek schools have. Based upon the comparables alone, at least for the three years that the Fact Finder believes is appropriate for a new Collective Bargaining Agreement, the Fact Finder recommends that step level increases be added, with the limitations as proposed by the Union.

RECOMMENDATION

It is the recommendation of this Fact Finder that for the 2010-11 school year that a step 10 be added to the salary schedule and that for the 2011-12 school year a step 10.5 be added to the salary schedule, all with a reduced index of 2.2% between each step and the current step 9.5 be re-indexed at 2.2%.

4. WAGE INCREASE FOR ALTERNATIVE EDUCATION TEACHERS

On the Wage Increase issue, the question of wage increases for the Alternative Education Teachers was the least developed of the issues by the parties. Some of the problem, as the School District notes, is that many of the School Districts which formerly have had alternative education programs have dropped these programs, so it is hard to make comparisons because comparisons are virtually unavailable. Because alternative education is important to the School District and the School District wants to keep its alternative education programs, because the programs reach out to many people in the School District who would otherwise not have this service or opportunity, the School District wants to keep the program but feels that there should be no increase for at least the two years for which the School District believes the Collective Bargaining Agreement should run.

The Union on the other hand believes that based upon prior history (see Union Exhibit V, Schedule F) that the Alternative Education Teachers should receive a 25¢ increase in each of the three years of its proposal after the 2009-10 year, in which it is agreed that there should be no increases for any of the employees. The problem with the Union proposal is that it appears from Schedule F, paragraph 3, of the MASTER CONTRACT between the SCEA and the Board of Education that the salaries of the Alternative Education teachers are indexed based upon what a teacher with a BA at step 0 would receive. Thus, in light of the fact that the teachers have agreed

to no wage increase for the 2010-11 year, it would appear inequitable that the Alternative Education teachers receive an increase for that year. At the same time, it would also appear patently unfair if the Alternative Education teachers were virtually the only employees in the School District not to receive a pay increase of any kind. Thus, consistent with what this Fact Finder has recommended concerning the wage increase for the teachers, the Fact Finder recommends that the Alternative Education teachers receive no pay increase for the 2010-11 school year and receive a 25¢ per hour increase during the 2011-12 school year, beginning in January of 2012.

HEALTH CARE

Arch Lewis, the MEA Financial Analyst, aptly described the issue of health insurance as an emotional issue. His comment seems appropriate in general, as we have seen over the last 15 or 16 years, one President of the United States who almost lost his presidency over health care reform issues (President Clinton) and another President who has been vilified by all sections of the public because of his push to establish universal health care. (President Obama). There is also an emotional component to the health care/health insurance issue as it is reflected in the contract negotiations between the School District and SCEA. The School District has used the issue as a “sword”, conditioning any wage increase based upon the Union’s acceptance of its health insurance program. The Union, on the other hand, wants to keep what it has, skeptical that any replacement insurance program will be as good as the program the members have now. Both sides in this emotional debate cite facts, facts which are hotly disputed. The School District asserts that by switching to the Health Plus Confinity Network PPO, the School District will save \$500,000. The Union disputes this savings and while it does concede that there would be a savings by a switch from

Blue Cross to Health Plus, the Union asserts that the savings would be much less (\$130,000) and would not justify giving up the health insurance program that the teachers are comfortable with.

Both sides introduced testimony of experts. On behalf of the School District James Anthony of Oak Point Group testified that the Health Plus program that had been accepted by the other employees of the School District, provided efficient, quality and much less expensive health care services. The Union did not counter this directly, although its President and one of its members did provide some scant, anecdotal information that those who had switched to Health Plus were less than satisfied with its service and the range of providers within its network. The main thrust of the Union was offered through its expert consultant, Kim Nicholson, who testified that by education and other cost cutting means, the expense associated with keeping the current Blue Cross Blue Shield program could be lessened, with an overall savings to the School District and at the same time allowing the teachers to keep the health insurance they are comfortable with, i.e., Blue Cross.

While the Fact Finder is aware that health insurance is often both an emotional and an economic issue, the Fact Finder finds the emotion and rhetoric in this case far more shrill and less understandable from an economic perspective. Further, although Fact Finders are not to be slavishly tied to comparables, comparables play a significant role in the Fact Finding process. While the School District can point to its internal comparables as justifying a switch to Health Plus, virtually all external comparables, except for two (with one being imposed), continue to have the Blue Cross Blue Shield program in one form or another. Based upon these external comparables alone, coupled with the fact that it appears that the Union is making good faith attempts to cut costs in health care areas, so it can keep the health insurance it is used to as opposed to a health care program it feels is being thrust upon them, the recommendation is that the health care provider for the teachers remain

Blue Cross Blue Shield. If the contract that this Fact Finder recommends is adopted (3 years), perhaps, two years from this time when negotiations begin again for a new Master Agreement, there will be more than mere anecdotal information available about the Health Plus system so that rational, rather than emotional considerations can be made about whether a switch can be justified based upon comparables and reasoned rather than emotional arguments. Upon this record, based upon the comparable school districts both in and out county, it is the recommendation of this Fact Finder that Blue Cross Blue Shield remain the health care provider.

There was a second health care related issue that was raised by the Union, i.e., the establishment of a Flexible Spending Account. This Fact Finder is very familiar with Flexible Spending Accounts, as he has participated in such accounts over the years, at a considerable cost savings by the use of pre-tax dollars to pay for medical bills incurred and not covered by health insurance. However, the proposal as offered by the Union in this instance was not well thought out. For example, the Union requested that the School District adopt such a Flexible Spending Plan, not realizing that most often these plans are administered by out side vendors, who charge for the services that they provide. While Flexible Spending Plans can be a great cost saving device for employees and administrators alike, before this Fact Finder could recommend that such a plan be implemented, the parties need to develop the concept through a discussion and negotiation process, which has not been done in the present instance. Based upon the information provided to this Fact Finder, the Fact Finder recommends that the parties continue to discuss the issue among themselves but the Fact Finder cannot recommend its implementation at this time.

DAYS AND PLANNING CALENDAR

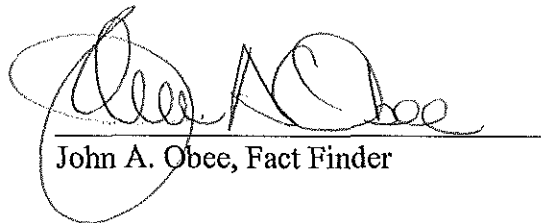
There are two issues related to the Calendar. The first involves the continuation or discontinuation of Channel 1, an 11 minute current events program. The second issue involves an increase in the instructional day by 5 minutes, with a reduction in the number of teacher work days from 188 to 184, and an increase in student half days from 5 to 10, using delayed starts.

As to Channel 1, the Union would like to continue the current events program, while the School District wants to discontinue it. The Union argues that the program is beneficial to students, while the School District asserts that the 11 minutes takes away from important instructional time for students. The problem for the Union, as the School District notes, is that the continuance or discontinuance of this program is a question that this Fact Finder finds is related to “technology” and the “use” of technology which by statute is a statutorily prohibited subject of bargaining. See MCL 423.215(3)(h). On this basis alone, the Fact Finder is without authority to make a recommendation.

As to the second issue, Union representative Maureen McCallister, made a passionate presentation as to why the School District should adopt and implement an “embedded” professional development program, which she indicated that research had shown constituted “best practices” for students and teachers. Under this “embedded” professional development program, teacher work days would be reduced, teachers would be pulled out of the classroom less times for professional development, and there would be more late starts so that parents and students would have more time to address personal needs. The School District, while not impugning the substance of the program suggested that there were inherent problems with the program including but not limited to the fact that under such a program there would be insufficient instructional hours for kindergarten, half days are instructionally less productive, and delayed starts are difficult for parents to handle.

While the Fact Finder was impressed with the intensity that Ms. McCallister expressed in discussing this change in the educational concept, the Fact Finder believes that the Union has provided insufficient support for such a major change in the educational process. Certainly no information was provided on what other school districts have done in this area and how these school districts have addressed the problems inherent in such a program as outlined by the School District. The Fact Finder believes that before a program such as Ms. McCallister advocates can be implemented, there must be additional research, discussion and evidence introduced by the parties as to the efficiency of such a program and that evidence is lacking at this point for this Fact Finder to make such a recommendation. On the evidence as made available to this Fact Finder it is recommended that the Calendar as proposed by the School District remain the Calendar for the term of the Collective Bargaining Agreement as recommended by this Fact Finder.

Respectfully Submitted,



John A. Obee, Fact Finder

Dated: June 25, 2010