2348

STATE OF MICHIGAN

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

EMPLOYMENT RELATIONS COMMISSION

In the Matter of Fact Finding

Dearborn Public Schools

Employer,

MERC Case No. D09-0027

-and-

Dearborn Federation of Teachers

Union.

INTRODUCTION

On August 9, 2010, MERC appointed Kenneth P. Frankland as Fact Finder in this matter.

Dearborn Public Schools (hereafter, "Dearborn" or "District") filed a petition for Fact Finding pursuant to Act 176 of Public Acts of 1939 dated June 22, 2010. Respondent, Dearborn Federation of Teachers (hereafter "Union" or "DFT") did not object to the filing as it perceived the parties not to be at an impasse. The issues were described as: 1. Salary step schedule structure; 2. Salary schedule reduction; 3. Insurance option concession; and 4. School calendar. The parties resolved the school calendar issue prior to fact finding. A Pre-Hearing conference was held on October 4, 2010 with hearings scheduled for October 28 and 29, 2010. The parties expressed an interest in a negotiated settlement and to that end hearings were postponed and the services of a mediator were used to seek a settlement. Unfortunately that did not occur and the matter was heard on November 22, 2010. Prior to hearing, each party submitted a list of comparable districts and presented preliminary position papers along with numerous exhibits which were supplemented by post-hearing briefs. The ample materials have fulfilled the obligation under MERC rules that the fact finder "inquire into pertinent matters necessary to allow the issuance of recommendations concerning the dispute." The parties presented their positions at the hearing via the exhibits and oral argument. The parties filed Post-Hearing Briefs on or before December 3, 2010 and this Report ensues. Although I have reviewed all submissions, I have not undertaken to summarize the voluminous and complex material beyond providing a brief factual context for the recommendations since it would entail describing that which the parties have lived through and undoubtedly understand much more thoroughly than me. Although the parties have engaged in extensive negotiations to reach agreement, and have agreed to extensions of the existing contract and to incorporate tentative agreements into a new contract, the remaining issues are:

1. Salary Schedule Reduction
2. Salary Step Schedule Change
3. Health Care Concessions

BACKGROUND

Before going into the merits of each issue, a few prefatory comments are in order. Fact Finding is a process to present the facts to a neutral third party, along with the respective positions of the parties and thereafter a report is generated by the fact finder with recommendations to resolve the disputes and develop a new collective bargaining agreement. By bringing the issues to public scrutiny with public discussion, it is thought as a way to reach an accord.

Similar to mandatory police and fire arbitration, each party designates communities it believes to be comparable and uses data from those alleged comparable communities to support its position. More often than not, the communities that are selected will have provisions in existing collective bargaining agreements that mirror or at least support the position that is taken in this proceeding.

In this case, Dearborn suggests Grosse Pointe, Farmington, Hazel Park, Livonia, Trenton, Walled Lake and West Bloomfield. The Union suggests Ann Arbor, Chippewa Valley, Forest Hills, L'Anse Cruese, Troy and Warren Consolidated. There are no common entities. Dearborn submitted a spread sheet with data from each district on salary, salary steps, teacher work days, and health insurance as well as changes in the 2009-2010 and 2010-2011 fiscal years. The Union submitted collective bargaining agreements, in electronic format, and assorted financial reports from its selected districts to argue their usefulness. The Briefs contain little discussion about the appropriateness of their own comparables or the inappropriateness of the comparables submitted by the other party.

For purposes of this case, I believe that districts that are geographically proximate, fairly close in student population, teachers and available revenue would best be used for comparison. However, no specific districts will be cited as comparable as the fact finder believes that the facts adduced in Dearborn will be given the most weight and the comparables information used only as appropriate in supporting the recommendations.

DEMOGRAPHIC AND ECONOMIC INFORMATION

The school district is located exclusively within the City of Dearborn in Wayne County the most populous county in the State. The city is the home to Ford Motor Company and other major industries as well as the world renowned Greenfield Village and Henry Ford Museum. The Dearborn Federation of Teachers represents approximately 1,200 teachers. Of those in the unit, about 1/3 are paid at the top step. The school district enrolls approximately 18,300 students. DFT is one of four unions representing Dearborn employees. The DFT collective bargaining agreement expired on June 30, 2009.

ABILITY TO PAY

The financial environment is the focal point of the three matters in dispute. The parties produced many exhibits with graphs and charts of budgets, general fund balances, and revenue and expenditure analyses, among others. I have read all submitted documents and the Briefs and tried to digest as much as possible; it is impossible to mention all in this report but I will try to outline a few salient items germane to making recommendations.

Dearborn, like all other Michigan districts, is funded primarily through the State School Aid Act. This is done by a basic foundation allowance (FA) that is multiplied by the blended count of students. Payments are made on the state fiscal year (Oct. – Sept.). Dearborn operates on a May 1 – June 30 fiscal year basis. Because of state budget issues, the allowance is not guaranteed but may be prorated and this happened in 2002-2003 and 2003-2004 and 2009-2010. It is unclear from this record to what extent Federal Stimulus monies negated or minimized the 2009-2010 prorations. Dearborn has not recognized such funds in its planning as they were not actually received because the original bill was vetoed because of formula issues and at the time of hearing a successor bill had not been enacted. But the DFT argues the monies will come and thus need to considered.

The actual foundation grant was rising from 2005-06 at $8,768.72 to a high of $9,082.72 in 2008-2009 but declined in 2009-2010 to $8,648.00. (Bd Ex. 1) The original budget for 2010-2011 projected revenue of $164,000,000. The budget was revised in September, 2010 to reflect revenue of $169,000,000. Dearborn should receive a substantial sum under the federal stimulus bill, estimated by DFT to be $1,600,000. Dearborn's revenue for the current school year should thus exceed $170,000,000 and there is no evidence that state funds to the school district will be diminished during the school year.

Dearborn provided a chart prepared by Plante Moran that shows the General Fund Revenue Over/Under Expenditures for recent fiscal years ending on June 30th and points out that there were deficits (shown in parentheses) in five of six years between 2005 and 2010.

- 2005 ($4,817,048)
- 2006 ($5,339,275)
- 2007 $1,517,319
- 2008 ($395,749)
- 2009 ($1,715,288)
- 2010 ($370,519)

It asserts that the deficits are largely attributable to flat or minimal increases in the state foundation allowance while salary, health care, and operational costs have increased at a greater pace.

Fiscal Yr.	*Total Foundation Allowance*	*Dollar Change*	*Percent Change*
2005-2006	$8,768.72	+$175.00	+2.0%
2006-2007	$8,978.72	+$210.00	+2.4%
2007-2008	$9,026.72	+$48.00	+0.5%
2008-2009	$9,082.72	+$56.00	+0.6%
2009-2010	$8,648.00	-$434.72	-4.8%

Although considerably smaller than in 2009, Dearborn did have a deficit in 2010. It has made cuts in all facets of the budget and achieved savings as the result of three other bargaining units, as well as exempt administrators, agreeing to 4.8% reductions in overall compensation. Dearborn has not replaced 59 teachers with the consequence that average class size has increased.

DFT counters that the deficits are a very small percentage of gross revenues and that the Fund balance has remained very stable. According to Plante Moran, the Fund balance as a percentage of general fund expenditures was:

2006	2007	2008	2009	2010
4.9%	5.7%	5.4%	5.0%	5.0%

After sifting through all the information, I am struck by the fact that Dearborn has been able to retain relatively the same Fund balance as a percentage of expenditures over the last five years. Not to have to "raid" the Fund balance in excess to offset deficits (small in relation to the total revenues available) suggests that the Board has been very diligent and exercised prudence and good judgment with necessary cuts and cost savings. The Board is to be commended for its fiscal stewardship. That diligence suggests that this District is not much different from many others that have experienced the same revenue fluctuations and rising costs and have stepped up to the plate and made tough decisions. Thus, when one considers the concept of ability to pay, it is not a question of inability to afford the total package and the impact upon the bottom line, but rather the wise use of the available resources. This is neither a bankrupt district nor even one on a watch list. This is so because Dearborn has taken drastic action and in the issues presented wants to avoid the slippery slope and seeks as much concessions from the Union as possible.

As to 2010-2011, the state did grant a retroactive $11 per pupil foundation allowance for 2009-2010 and the projected state reductions that the Board used for 2010-2011 have not been implemented. In July 2009, the Board projected a deficit of some $10,000,000 but that did not occur and revenues were upgraded as the information became available. Further, while the federal stimulus funds are not in the "till", they must be taken into consideration and be part of the ability to pay equation. In summary, this is not a case of inability to pay but rather how to make the best use of the available funds.

DISCUSSION

Before the analysis of each issue, a few thoughts are in order. The reality of collective bargaining is that frustration and animosity can arise particularly when negotiations are tense and protracted. I believe the chances of reaching an agreement are enhanced when the focus is on the issues on the table rather than perceived unspoken agendas of either side. From what I have observed from the record and the demeanor of the parties at the hearing, the DFT is understandably and justifiably steadfast in not voluntarily giving up hard-fought contractual benefits and the Board is understandably and justifiably concerned with fulfilling its important responsibilities to do its utmost to keep the District's finances in good order during extraordinarily problematical times and maintaining the high quality education DFT members have always provided.

It also seems appropriate to commend the parties for maintaining the confidentiality strictures of the mediation process. Fact finders cannot take into account details about unsuccessful attempts to resolve issues that may have occurred during mediation should that information be disclosed. Here, while there was an inference that the parties may have been close to a settlement while in mediation, no details were provided – nor should they have been.

Fact finders recognize that the fact finding process is intended to assist public employers and unions representing public employees – as well as the constituents both represent -- by having a third party provide a disinterested assessment and hopefully suggest a viable path upon which parties can resolve disputed matters.

Most fact finding reports repeatedly mention an approach labeled "the art of the possible." Recognizing the ordinary give and take that occurs during the negotiation process coupled with the realization that seldom do parties achieve everything they would like to attain in a successor agreement, fact finders try to preserve sound principles of collective bargaining by attempting to discern the settlement the parties would have reached if their negotiations had been successful or at least offer constructive options for the parties to consider. Compromise is inevitable as rarely does one party achieve all its goals and the art of the possible is the essence of compromise.

CONSIDERATION OF INDIVIDUAL ISSUES

1. Salary Step Schedule

In April 2009, Dearborn proposed for the new contract a new salary step model from 14 steps to 27 steps. This was later changed to a 22 step schedule designed to provide a 3% to 5% step increase with the current salary at step 1 as the new step 1 and the final salary amount at step 22 the same as the current top step. Dearborn argues this will generate savings from the difference between the ending salary of the 30 retirements on average and the 30 new hired employees per year to pay for the steps that were obligated to be paid by contract assuming no increase from the state in the foundation allowance. Since new employees start at the lowest level, the savings could be considerable.

The Union argues that by going to 22 steps it would take a teacher 8 more years to reach maximum salary and this is outside the mainstream of the comparables. Ann Arbor has 12 steps; Chippewa Valley has 10; Forest Hills has 12; L'Anse Cruese has 11; Troy has 11; Warren Consolidated has 11; Grosse Pointe has 11; Hazel Park has 11; Livonia has 12; Walled Lake has 11; and West Bloomfield has 11.

The Union has proposed expanding the wage scale to 17 steps (the Union considers the current arrangement 14 steps while Dearborn considers it 15). U. Ex. 51 is the District analysis of a 17-18 step schedule projected over 10 years as proposed by the Union. It assumes 35 retirees in the master's lane each year replaced by 35 new hires at step 1. 2010-2011 is the year of transition when DFT moves to the new step schedule at no less than a 3% increase. It is estimated to cover 1,218 members as of October 18, 2010. The Union argues that the cost to Dearborn in 2010-2011 is about the same as for 2009-2010. The Union brief suggests its proposal will reduce wage costs by $5,000,000 in the first year and will minimize the increase in wages in the second year.

Recommendation

Adopt the proposed expanded step schedule from 14-15 to 17-18 steps as set forth in the District analysis in U. Ex. 51.

Clearly this issue fits right into the art of the possible and the essence of compromise. Having made a counter proposal the Union must have recognized the merit and wisdom of the concept proposed by the Board. At least in the first year, as indicated by U. Ex. 51, the proposal is fairly revenue neutral and the exhibit suggests that as older, more highly paid teachers are replaced by less credentialed teachers the cost of those new teachers is much less than those being replaced. About 1/3 of the teachers are at the top step. As I understand the proposal, the new steps would affect those at the higher rates of pay and thus achieve the cost savings advocated by the District by extending the time line when increases are paid per the step schedule. The Union proposal does reduce the current cost of compensation and slows the progression of built-in step increases. While not what the District asked for, the concept is a viable solution to have resources available to replace retired teachers instead of dipping into reserves or not hiring at all. Dearborn's original proposal seems out-of-line with other districts and no data was submitted showing other 22 step districts. Thus, the 22 step approach is not merited even if one accepts the inability to pay argument of the District. It simply asks far too much in light of what occurs in other districts. The Union does understand, at least on this issue, some adjustments must be made in light of challenging financial times. Adding three steps to the grid seems to be a most reasonable compromise and the parties are urged to follow this recommendation.

2. Salary Schedule Reduction

Dearborn seeks to make reductions in the teacher's salary schedule based on the reduction in the FA provided by the State. A percentage reduction in the salary schedule across the board equal to the reduction in the per pupil foundation funding compared to the base per pupil foundation amount in 2008 - 2009 is sought. (It is noted 2008-2009 is the highest FA in the past five years!) The Board asks for this concession to be able to afford salaries when the FA is diminished without having to reduce staff. In particular, in Proposal 13B, the Board advocates a 4.8% reduction in 2010-2011 across the entire salary schedule after its step increase proposal is implemented in 2010-2011.

The Board argues that to minimize the 2009-2010 operating deficit, it secured 4.8% reductions in overall compensation from three bargaining units and that the teachers in the spirit of commonality should take the same 4.8% reduction. The Board in its post-hearing Brief states that the Union overstates the magnitude of the concessions by asserting that the proper way to look at the wage reduction is in combination with health care concessions and demonstrates the effects upon four groups depending upon their health choices. Frankly, the total compensation approach, while valid from the Board's perspective complicates the wage only analysis. I cannot discern what the 4.8% ***total compensation reduction*** for other units means because no data is submitted how that breaks out in wages, health or other components.

Like its other cost-savings proposals, the idea that the finances would be in better shape if future decreases in the foundation allowance could be offset by an equivalent amount in salary reductions is a rational plan from the District's perspective. But for the same reason that it would facilitate long-term planning and provide stability for the District, it would have precisely the opposite effect for employees. How, for example, do DFT members responsibly manage finances when one's paycheck is unexpectedly and substantially reduced – depending on the unpredictable vicissitudes of state actions? A collective bargaining agreement should afford a measure of stability to both sides and allow people to make decisions based on settled terms and conditions. Employees who are asked to take substantial pay cuts will have a difficult enough task in realigning their personal budgets and knowing what that reduced pay will be for the term of the contract is an eminently reasonable expectation. The Union points out that collective bargaining representatives have certain rights to confer and negotiate about the implementation of significant salary changes. While I agree that it is a creative and somewhat attractive solution to reduce salaries commensurate with revenue reductions, the uncertainty that would result does not justify such an approach at this time. **Thus, I recommend that the proposal that salaries be reduced on a formula tied to FA reductions be reserved for discussion at a later date.**

As to an across-the-board salary reduction of 4.8% for the 2009-2010 fiscal year, there is merit to some reduction. While it seems to me that the revenue stream is somewhat brighter than earlier projected, issues of long term viability suggest that now is the time to start reigning in costs in salary and health care – two of the biggest cost times that contribute to long term instability. My emphasis on wise utilization of scare resources leads to that conclusion.

Compared to districts in which financial managers have been appointed, the Union's point is well taken that Dearborn is better off. But the District wisely declares that some school districts appear to be well down that path and only restraint now will forestall use of reserve funds. It appears the allowance will probably not be cut during this school year. The Board's concentration is, at it should be, the long-term financial stability of the District. However, my task is to make recommendations for the last two years of this contract. While undoubtedly helpful, the one-time infusion of stimulus funds does not provide long-term financial stability but rather only some cushion for this year.

<u>**Recommendation**</u>

For 2010-2011, a 2.4% across the board salary reduction imposed as of January 1, 2011 after the new three step schedule is implemented.

For 2011-2012, a freeze at 2010-2011 levels.

As indicated above, this year's revenue stream, especially the influx of federal money, is murky. The three step adjustment that I have recommended would take some pressure off current use of revenue but still leaves the District possibly heading down the slippery slope. There is no better time than the present to address long term objectives of fiscal stability and to make sure expenditures more closely match available revenues. Teachers see the handwriting on the wall but never want to concede any more than is necessary. School boards, conversely, need to be realistic and not try to tip the balance in their favor with a heavy hand. Concessions are hard to accept, no matter how meritorious the motive and compromise is the art of the possible.

While 4.8% may be desirable from the Board's perspective and may have some logic, I sense it is too much to ask when coupled with changes in the step schedule and health cost issues. I do not know how the 4.8% **in <u>total</u> compensation reduction** was derived for the other units. When all my recommendations are taken together, Dearborn should achieve much of what is sought. I usually prefer slower movement toward the long range objective as that would more likely be the bargain parties usually obtain. Since there have been heated and protracted discussions on this and other topics, the parties are urged to start the salary concession process in a measured manner and leave to the bargaining table the venue for more stringent concessions. The give and take and ebb and flow of negotiations is where this issue belongs. 2.4% would be a meaningful start and I suggest January 1, 2011 because making the wage reduction retroactive to the start of the fiscal year would impose an undue hardship since money spent is gone. January 1 will impose some hardship but should be manageable.

As to 2011-2012, I am reluctant to suggest a salary reduction as the revenue stream is unknown. With a new Governor and new legislature dealing with a very large state deficit, one can only guess what FA will be. It could well be the same as this year; it might be less. The legislature may pass a two year budget that would tell Districts what they will have for two years – something that would surely help bring certainty to the budget process. There are just too many unknowns. However, in the event that total revenue falls below $169,000,000 or the FA is reduced below the current $8,648 per pupil, the parties could well go back to mediation and determine with the known figures whether further salary reduction is warranted. To help make that decision, the goal should be not to go below the fund balance of 5% of expenditures realized the last two fiscal years.

If salaries are frozen at the reduced levels, the parties can have time to see what happens in Lansing and get back to the table and work with the then known available resources. Lest there be no doubt, when there are fewer resources, the pain must be spread equitably and this unit should be no exception. A freeze may only be a temporary solution to what may loom ahead.

3. Health Care

DFT members currently are allowed to enroll in three health insurance plans: Blue Care Network (BCN), Health Alliance Plan (HAP), and Blue Cross PPO Plan I (BC - PPO Plan 1). BCN and HAP are HMO's. Although there have been modifications to its initial proposal, the District proposes a contract change that would allow employees to continue enrollment in any of the three health insurance plans but would require employees in the BC - PPO Plan I to pay the entire difference in cost over the cost of the BCN. The employee co-pays in the District's proposals have changed over time and the latest proposal, which the District contends are the amounts suggested by the DFT, sets co-pays at $5 generic/$15 non-generic prescription coverage, $10 office visit, $30 urgent care visit, $100 ER visit, and $10 chiropractic visit.

Dearborn argues this concession is necessary to fund the initial step onto the new step schedule that includes at least three percent increases and to meet the rising cost of health care while providing a no cost health care option to employees.

The Union states that the District's health care proposal was created 18 months ago and has not been substantially modified. A very large proportion of bargaining unit members have elected PPO coverage and the requirement to "buy up" from the BCN-HMO would be nearly $700 a month for family coverage. Worse, the payments are after tax so most teachers would pay the additional annual cost of $8,200 plus $1,600 in taxes. The combination of the proposed wage reductions and proposed increase in health care contributions would reduce an average teacher's pay from $85,100 to $70,000. No school district has sought or achieved comparable reductions.

The Union claims it has presented the Employer with a health care proposal which would modify co-pays and deductibles and would represent a substantial savings but the District will not consider that proposal. The Union maintains that the proposal presented in February, 2010, remains a viable option. The Union has also suggested a VEBA plan that would relieve the District of its obligation to administer the health care system by contributing a fixed amount to the Union. The Union claims a VEBA plan would essentially freeze the District's cost for health care for 2010-2011 with future increases being determined according to a formula.

With the information in this record, it has not been feasible to confidently make comparisons to other districts. Health insurance plans are complex and variables such as coverage, exclusions, policy limits, co-pays, deductibles, and premium sharing (in addition to other variables) would all need to be considered in a comprehensive comparison. A review of the comparable districts information supports three conclusions. First, as pointed out by the Union, each of the comparable districts offer a fee-for-service plan in addition to a HMO plan. Second, premium sharing by the employee is not outside the norm. Third, employee contributions in the comparable districts are not close to the amounts in the District's demands.

The annual "buy-up" cost to BC – PPO Plan I is $1,392 for a single person, $5,418 for two people, and $7,812 for family coverage. While the District says it "simply cannot afford to offer PPO Plan I to the DFT without the bargaining unit member paying the additional cost of the premium," the correlative question is whether a bargaining unit member facing his or her own significant financial challenges and salary reduction can absorb $650 a month. The focus cannot be solely on the District's finances. In the same way that expectations by DFT members that the status quo on remuneration can be maintained in the present environment is in my view unrealistic, insistence on health care premium sharing that requires increases from zero up to $8,000 in a single contract are similarly imbalanced. I have no doubt that this would not be the settlement the parties would reach in a successful negotiation and recommending its implementation would not, in my judgment, best preserve sound principles of collective bargaining.

One's relationship with his or her physician is for some people extraordinarily important and for others less so. There is nothing the parties have presented in this proceeding that would allow me to even begin to intelligently assess the merits of the District's position that the members of the bargaining unit in the BCN-HMO receive the same excellent high quality care from the same physicians who participate in the BC - PPO Plan I. I simply do not know whether that is accurate and I assume the degree of satisfaction in any health care plan varies from employee to employee. It is clear that retaining PPO coverage is a bargaining priority and it is an option that many of the membership have selected. The comparable school districts offer either a traditional or PPO plan and I conclude that continuation of the BC - PPO Plan I option at a cost that members can realistically afford is merited. At the same time, the District is on firm ground when it insists that employees who reject HMO coverage should be willing to contribute to the cost of a considerably more expensive insurance plan.

Recommendation

After considering the arguments, the cost information, and the comparable health care information from other school districts, I recommend that an employee who elects to continue BC - PPO Plan 1 contribute one-third of the additional cost over the BCN HMO option. For a single teacher, this would amount to approximately $38 per month; for coverage for two persons approximately $150 per month; and for family coverage approximately $217 per month. While this does not achieve all of the District's objectives, it starts the process of premium contribution, heretofore foreign to this unit. Fully paid health insurance by the employer in the public sector is fast disappearing. While co-pays and deductibles help lessen the load, it is inescapable that the trend is going toward some premium cost sharing comparable to the private sector.

Since we are well into the fiscal year, I suggest this recommendation be implemented prospectively from February 1, 2011 forward. The District is encouraged to establish the appropriate plan that allows payroll deductions and using pre-tax dollars for the employees' contributions. This approach would address some of the after-tax considerations.

This should be continued for the second year and thereafter the parties can consider whether the VEBA approach is a feasible alternative should the

Union present a concrete, fact specific plan for consideration. The mention of VEBA so late in the process and without any real specifics is not a realistic proposal.

Should the Union want to further discuss increases in other components of the cost of plans as they have suggested, the minimum savings from such suggestions would have to be the dollar equivalent as described above.

CONCLUSION

I wish to acknowledge the effort of the parties as they produced a great amount of material in the exhibit books. The Briefs were very helpful to assist in understanding the issues. Needless to say fact finding is an imperfect science. The recommendations may not make a party happy on a particular issue; but that is the very nature of the process. However, it is hoped the comments and recommendations will be of benefit to the parties and that they will be able to reach an accommodation and quickly develop a new agreement. At least it may give the parties food for thought and the ability to alter their positions and reach an accord.

Respectfully submitted

Kenneth P. Frankland
Fact Finder

Dated: January 28, 2011